NATIONAL MUNICIPAL REVIEW

VOL. XVII, No. 9 SEPTEMBER, 1928 TOTAL No. 147

EDITORIAL COMMENT

We welcome to our columns, as a contributor to this issue, William Beard, son of Dr. Charles A. Beard. We hope that his article on "Traffic Relief Through By-Pass Highways" may prove to be the forerunner of many articles written in the style of his illustrious father.

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The Tax Situation in Chicago

Readers of the REVIEW will be interested in the discussion of the tax situation in Chicago by Professor Herbert D. Simpson of Northwestern University, which begins in this issue. This article describes a scientific attempt to iron out the inequalities of the present assessment system which varies from uniformity by as much as forty per cent. Professor Simpson's discussion, although referring particularly to Chicago, is applicable to the comparable situation in many large American cities at the present time. It justifies careful reading. The subject will be further discussed in our October issue.

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Doctor Beard on the "Power Trust"

In the midst of his working, writing and philosophizing at his Connecticut farm, Dr. Charles A. Beard has found time to furnish us with the following comments on the "Power Trust":

Not in many a year have we had an investigation in Washington as important as the inquiry into the so-called "power trust," which is being conducted under the auspices of the Federal Trade Commission. In comparison, the various senatorial investigations that have "rocked the country" sink into trivial insignificance. The latter have merely involved temporary scandals, the reprehensible conduct of public officers and private individuals. The Federal Trade Commission inquiry, on the other hand, touches a fundamental, growing, continuous interest—the gas and electrical industry. It has revealed that industry closely organized, and possessing a well equipped publicity system for the purpose of "educating the people" with respect to utility matters in general and in particular with reference to the horrible wickedness and inefficiency of public ownership.

The inquiry has revealed many things, according to the recently published preliminary report. It shows utility concerns hiring professors to carry on campaigns of agitation against municipal ownership, ostensibly under high university authority, subsidizing newspapers under the guise of advertising, deluging the public school with

biased propaganda, assailing municipal ownership advocates as Bolsheviks and resorting to back-stairs tactics to discredit them, and granting money to universities and research institutions with an eye to "proper" results. In short, the propaganda of the utility interests stands fully revealed in all its nakedness, and a powerful light is thrown on the nature of the "public opinion" made by newspapers, distinguished speakers, and controlled school books. Much of the testimony has been printed in the *United States Daily*, but we are informed that the complete record will be published by the Commission, it is to be hoped, with the entertaining "exhibits," such as cancelled checks and undercover letters. While it would be unfair to prejudge the final outcome, it is clear that the utility interests will do well to clean house before a wrathful public does something that may be uneconomical.

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A Reviewer Reviewed

The June issue contained a review by Professor Kirk H. Porter of the report of the New York Bureau of Municipal Research on *County Government in Virginia*. In view of the interest of our readers in the problems of county government reform, we append a letter from Mr. Frank Bane, state commissioner of public welfare of Virginia, commenting upon Mr. Porter's criticism of the Bureau's report:

"*To the Editor:*

"There is much food for thought in the comprehensive study made by the New York Bureau. This report and the review of it by Kirk H. Porter in the NATIONAL MUNICIPAL REVIEW of June, 1928, are stimulating reading.

"The reasons for Dr. Porter's praise of the survey seem evident. As he says, 'The work apparently has been very well done. The investigators went to the bottom of their problems and have dealt with them most thoroughly.' 'The report is based on a very intelligent first-hand study, and is most illuminating,' and 'public authorities in Virginia, and elsewhere, can profit much by a careful study of this excellent report.'

"But why stop at recommending it to public authorities? If the counties are spending about $28,000,000 annually, in a state with a total population of only between 2,000,000 and 3,000,000 persons, why should not business men read it and what it says about the unbusinesslike ways in which we are governed? Why should not the general body of taxpayers be interested in it?

"The bureau suggests furthering both economy—to the tune of millions—and efficiency by replacing methods devised in the ox-cart age by others better suited to this year of grace of the automobile and the airplane.

"Dr. Porter says, 'There is no denying that undesirable conditions are convincingly disclosed.' Yet he seems to shrink from a program of reform. He apparently hesitates to endorse the recommendations of the bureau and he makes none of his own. The boldness of the bureau seemingly almost shocks him. He says regarding the investigators: 'There is no doubt that they were convinced before they ever started that county government in Virginia was exceedingly bad.' It is difficult to see this. If the survey brought to light unsatisfactory conditions, why suppose the investigators were preconvinced that they were going to find these? The report impressed the present reader as made in a very fair-minded spirit. Moreover, although it was published in the state and widely noticed in the Virginia papers, it has not brought out in Virginia accusations of undue bias against existing methods.

"The Virginia public apparently agrees with the report that the machinery of county government is cumbersome and out-of-date. The fee system in place of salaries is open to grave objections. A set-up of thirty to forty officials is not suited to small counties with a population as low as 4,000 to 10,000 persons in thirty-three out of the total of one hundred counties. Laxity in incurring and handling heavy county indebtedness is a serious matter. There is need for full coördination between state and county governments.

"Dr. Porter comments on the investigators' confidence in their own criticisms and recommendations. It is hard to see why after a most thoroughgoing study, the bureau should not have confidence in its findings and should make halfhearted rather than forceful recommendations.

"The newness of the county manager plan also seems to Dr. Porter an objection. He forgets that the manager form of government is quite in accord with political philosophy in Virginia. In fact, city manager government originated in Virginia, and is now in operation in all but two cities.

"On one point Dr. Porter is definitely in error. He says, 'Supervisors . . . are brusquely swept into the discard as elective officers.' This is incorrect. Both plans of organization proposed by the bureau, the manager plan and the elective administrator plan, retain the board of supervisors as elected by the voters of the county.

"Dr. Porter's comment: 'The county is treated throughout as an area of state administration rather than as an area for local self-government,' also seems mistaken, for I note that on page 13 the investigators recommend that 'the supervisors should have more extensive powers conferred on them to pass local legislation. This would be better for the counties and would relieve the General Assembly of a great deal of local and special legislation.'

"After reading the report and Dr. Porter's evaluation, and then re-reading the report, I still feel that not only has the bureau rendered an extremely valuable service to the state, which Dr. Porter evidently believes himself, but also that the work has been done in an exceptionally large-minded way, and that the courage and incisiveness of the investigators add to its value."

FRANK BANE,
Commissioner of Public Welfare, Virginia.

CIVIC IDEALS OF LONG AGO[1]

BY CARL S. KNOPF
University of Southern California

Many ancient standards of good citizenship are applicable to modern life. :: :: :: :: :: :: :: :: :: ::

DRAGGING a mummy into a City Club luncheon makes us one with the Egyptian of long ago. It is said that at the height of the festivities, a mummy was brought into the banquet hall as a gentle reminder that "tempus fugits." However dead the modern archaeologist-mummy may be, he cannot be dry in discussing ancient civic ideals. There are too many surprises, too many startling parallels, too many pre-views of the passing show.

Any abiding civic structure must be based upon loyalty and responsibility. As early as 3400 B.C., the Sumerians, in the oldest known law code, provided that a young man who cut loose from his family and civic responsibility lost status and rights. On the other hand, a parent who attempted to cast off a son had to make a financial settlement. Sumeria insisted that both the rising generation and the one responsible for it must shoulder the task of social adjustment and mutual understanding, for the promotion of civic peace and happiness.

Five thousand years ago this code made a man responsible for all items of property under his care—a law which might now curtail many an item of petty graft in high places. It would even be appreciated by honest landlords today when the repair bills come in.

A PIONEER CIVIC REFORMER

About 2800 B.C., Urukagina took up the torch of civic reform. In his contemporaries he generated more heat than light, but that was to be expected. Urukagina emerged from the masses, and his program was death to special privilege and vested interests. He controlled the hours of labor and forced contractors to provide water and rest periods. He made the morticians reduce their charges for the city's poor. He started a tax reduction program which cut off the overhead and left plenty for civic needs.

In that day all men were superstitious, and no undertaking would be initiated without consulting the omens. The priests were charging extortionate rates. Urukagina assumed that a priest is a minister, a public servant, and therefore ordered that divination be practised without charge in the case of the poor. Of course, he never thought of a county hospital, county poor farm, city charities, or similar modern attempts to alleviate misfortune; but his basic idea was the same.

Having no pedigree, and being a bit too radical for his day, the higher-ups "got" him. Where Urukagina ruled there now lie heaps of sand, but his principles still live in the hearts of good Americans throughout our land who are striving to make their cities happier and more beautiful.

THE HAMMURABI CODE

The Hammurabi Code, about 2000 B.C., is the second oldest known code, and has been preserved almost complete. An English translation, easily procured in any city library, will stimulate the thinking of any in-

[1] Address delivered before Los Angeles City Club.

telligent business man who spends an evening with it. A few points of interest are as follows:

First, every man must be a producer. The government called to account a man who left part of his field uncultivated.

Second, when a man made a deposit at a bank, due notation must be made, just as in the pass-book today. If the bank were robbed, it stood the loss rather than the depositor. So it is today, though covered by insurance.

Third, insurance was operative in a simple way. If a house were robbed and the burglar not caught, the loss was declared and the city repaid the home owner. One imagines the police force had to function or the town go bankrupt! It was a form of municipal burglary insurance, on the same principle as modern workmen's compensation.

This same code gives us the first minimum wage laws, the first regulation of freight rates, the first contractors' liability, the first graduated scale of physicians' fees, and the first laws against malpractice. Its ideas are so ultra-modern as to approach radicalism; but it is the radicalism of progress, not that of destruction.

THE PENALTY FOR WIFELY INCOMPETENCE

The average citizen can chuckle appreciation over one law: "If a woman be not economical, gads about and belittles her husband, they shall throw that woman into the river!" So was dampened the ardor of a nagging busybody! Parenthetically be it said that this may be an idea rather than an ideal, at least so far as the technique is concerned.

ANCIENT ACCOUNTING PRACTICES

From legislative ideals it is but a step to business practices. Before us lies a little lump of clay, stone-hard, about an inch square, half an inch thick, covered on both sides with wedge-shaped indentions, the typical cuneiform writing of Babylon. This is a receipt for taxes paid. It says that one fat sheep and one unfattened sheep were delivered by A-Lul-Lul, a slave, as the official payment for Mr. Du-U, the military officer. The document is dated by the fall of a city, 2333 B.C.

Next to this receipt lies another, recording a payment of grain on account. Credit and installment payments were a recognized practice in 2338 B.C. Incidentally, the document is signed "per A-Da-Ga, the scribe." Many a bookkeeper today signs receipts that the president of the corporation never sees. It is all in the day's work and makes intricate organization possible, thus stimulating great business enterprises.

Another tablet, about two inches square, bears the imprint of the private seal of the big boss. He probably could not write his own name, or maybe like modern signatures no one could read it if he did. A scribe acted as stenographer and wrote the document, which was then signed. The ancient business office echoed to the dulcet voice of the manager saying, "Miss Ishtar, take this one."

Visible filing is not new. A document involving certain amounts, or numbers of animals, was often annotated on the side, and when laid in the archives this notation was visible. The business of a day or month might be added up in a short time. Income tax returns held no terrors for the systematic Babylonian business man.

Centuries ago great minds dreamed of an orderly world. In it men would do business on a basis of honesty, good faith and mutual trust. In it the less fortunate would never be legal prey of the more fortunate. Wages, trans-

portation, banking, industry were all subject to the civic idealism of these men of vision. So they are today, and every municipality worthy the name is moving toward its goal to the extent that it too builds up the sense of loyalty and responsibility without which citizenship is but an empty shell.

GOING AFTER THE MUNICIPAL TAX DOLLAR

BY WELLES A. GRAY

Assistant Director, Municipal Administration Service

A recent nation-wide study of the methods of enforcing real estate tax liens. :: :: :: :: :: :: :: :: ::

THE importance of the sale of tax liens as a means for enforcing the payment of taxes on real property cannot be overemphasized. This is the only satisfactory method that has been found thus far; yet a search through the published works on municipal finance will disclose but comparatively little material discussing this important subject. In recent years public and private agencies in a few cities and states, such as Baltimore, Philadelphia, New Jersey, and Ohio, have made investigations along this line with interesting results. Past investigations, however, have dealt with the problem chiefly as it exists in one city or state, and it has remained for Mr. Carl H. Chatters, city auditor of Flint, Michigan, to survey the subject along general lines, tie together what has already been done, and make constructive recommendations of a general nature, applicable widely throughout the country.

In his pamphlet, *The Enforcement of Real Estate Tax Liens*, just published by the Municipal Administration Service,[1] Mr. Chatters discloses the results of a study of the sale of real estate tax liens in forty-two governmental units. This study shows conclusively the need for a revision of the state and municipal tax sale laws in most parts of the country. He points out that "the present methods of enforcing real estate tax liens are generally inefficient, unfair and lacking in uniformity. They fail to promote the payment of taxes, either before or after delinquency. The best interests of the municipality, the taxpayer, and the tax title purchaser are not harmonized."

[1] Carl H. Chatters, *The Enforcement of Real Estate Tax Liens*. Municipal Administration Service, 261 Broadway, New York City. 35 cents.

PROTECTING THE INTERESTS OF ALL PARTIES

Mr. Chatters considers this problem from the point of view of the city, the buyer of tax titles, and the taxpayer. In formulating laws on this subject in the past, legislators have treated it in a rather haphazard fashion. Their chief consideration has been the collection of taxes; but even there the means used have been in many cases either too harsh, or not severe enough. This phase of the subject is, of course, of primary importance. It is essential to the welfare of the city that its taxes be collected, and, obviously, adequate means for accomplishing this should be provided.

In providing such means, however, the interests of the tax title purchaser should not be overlooked. He is an essential factor in the present system; yet he must often take a gambler's chance. The law in certain jurisdictions does not adequately protect the titles that are purchased. While in most jurisdictions tax deeds are generally *prima facie* evidence of the facts they state, in one or two instances the burden of proof still rests upon the shoulders of the title purchaser. Furthermore, in some jurisdictions an attempt is made to make the tax deed evidence of regular conveyance of the property. This seems hardly fair to the taxpayer, and has been held in some instances to deprive the property owner of his title without due process of law.

Two classes of taxpayers, it is pointed out, should receive protection,—the worthy poor and those who have allowed their taxes to become delinquent through ignorance or misinformation. He recommends that the first group be protected through city or county exoneration, and that the second group be protected through adequate notices of the dates on which taxes are due, dates of delinquency, and dates of proposed sale.

THE PROBLEM OF TAX DELINQUENCY

Some interesting facts about delinquencies throughout the country are revealed by this study. Cities imposing moderately severe initial penalties seem to have, in the main, the lowest percentages of delinquency. Furthermore, the promptness with which liens are sold seems also to be a factor of some importance, for in cities where action is taken soon after delinquency the percentage of unpaid taxes is relatively low. In Detroit, tax sales are held during the year for which they are levied. During the fiscal year beginning July 1, 1926, the tax levy there amounted to $71,381,645.62, of which $66,853,425.55 was collected. Tax sales were held in June, 1927, and netted $3,585,256.87. As a result, only $879,960.20 or one and two-tenths per cent of the levy remained delinquent. Des Moines, in 1927, levied taxes amounting to $7,568,016.27, and after tax sales held in December, 1927, less than one per cent of the taxes remained unpaid.

The experiences of New York City and the state of Ohio form an interesting contrast here. In New York taxes remain delinquent for three years before liens are sold. In 1925, for example, the total levy of New York City was $328,374,984, and the delinquent taxes amounted to $37,794,822, or something over ten per cent. In Ohio, taxes are delinquent four years before action is taken. In that state in 1925 the levy was $261,444,876.11, and the unpaid taxes amounted to $26,447,288.90, a delinquency exceeding ten per cent. While undoubtedly the time of the tax sales was not the sole factor in these four cases, it seems from the facts to have been partially responsible for the percentage of uncollected taxes.

SUMMARY OF RECOMMENDATIONS

In addition to the recommendations mentioned above, Mr. Chatters makes, among others, the following:

"Tax procedure should be based upon a carefully-planned calendar with the shortest duration of time consistent with the public good between the date of levy and the final disposition of the lien." (A suggested tax calendar which is adaptable to the fiscal year of any city is included in the pamphlet.)

"Taxes should be payable in two installments with a high rate of penalty added at delinquency.

"Tax certificates should be sold late in the fiscal year for which the taxes are levied.

"Competition at the sales should be based upon bidding down the interest rate.

"The purchaser of a tax certificate should enforce his lien by foreclosure proceedings following the general practice for mortgage foreclosures.

"The tax certificate may be foreclosed one year after sale and must be foreclosed within three years or become invalid.

"All administrative acts relating to tax procedure should be mandatory."

In addition to tables on tax delinquencies and methods of selling tax liens in various parts of the United States, there have been included in the pamphlet valuable appendices, among which should be mentioned the laws or ordinances on this subject in force in California, Detroit, New Jersey, North Carolina, and Rochester, New York, and the ordinance of Flint, Michigan, for the protection of the worthy poor.

TRAFFIC RELIEF THROUGH BY-PASS HIGHWAYS

BY WILLIAM BEARD

National Institute of Public Administration

A discussion of the economic factors and potential savings involved in the construction of by-pass highways. :: :: :: :: ::

"SAY, Jack, is this right for Philadelphia?"

"Sorry, old timer, but you are headed wrong. Go back to the railroad station, take your first right past the library, then your left down Myrtle Avenue and ask someone down there how to get out of the city."

After one has failed to find the railroad station, has been caught up in a maze of one-way streets, has returned to the same spot several times in succession, has severely denounced the traffic lights, and the "no left" signs, one appreciates the need for a direct route through the large modern city.

Besides suffering such inconveniences, motorists in a hurry to reach home after a long journey are likely to be a menace to others on account of their fast driving. Speedy through-traffic is responsible for a long list of city accidents. If such traffic can be removed from the main streets, then travel will be so much the safer for all.

The problem concerns the local resident as well as the interurban tourist. Inhabitants of cities located on main trunk lines find streets crowded enough with their own vehicles without having the jam augmented by outsiders who have no local business to transact. The mutual interference caused by the mingling of local and non-stop traffic is detrimental to the interests of both parties in the rapid execution of their tasks.

THE GENESIS OF THE THROUGH-TRAFFIC PROBLEM

Before the problem of the horseless vehicle demanded attention, a town was the focus of a radiating "fan" of short roads. Citizens in the region around a new settlement naturally made it a center of their trading activity. Journeys from town to town were too infrequent to warrant extensive planning for such traffic through construction of by-pass highways. With the coming of the motor age, however, the city, besides developing greater

local trade, became a funnel through which non-stop traffic poured with ever increasing rapidity. To make matters worse the engineer of the motor age, in building hard roads, followed the old patterns inherited from the era of stagecoach and oxcart. The veritable flood of through-traffic of the present day hurries in and out of every nook and cranny of the metropolis in its effort to thread its way past the impeding city. This flood demands attention of a new sort; it cannot be handled by pre-motor methods.

THE MAGNITUDE OF THE THROUGH-TRAFFIC PROBLEM

While it is difficult to determine the magnitude of the through-traffic problem for the country as a whole, a study of one great transportation system leading to New York and its environs may serve as illustration.

The New York *Times* of June 24, 1928, summarizes a study made by the bureau of agricultural economics of the United States Department of Agriculture in coöperation with the New York Food Marketing Research Council on the subject of truck delivery of peaches, peppers, canteloupes, tomatoes, and apples into New York City:

> It was found that in the period of investigation the five products reported were shipped by motor truck to New York from points as distant as Virginia, Maryland, and Delaware, as well as from the near-by sections of New Jersey, Pennsylvania, Long Island and Connecticut.
>
> Thirty per cent of all peaches arriving at New York during the period reported came by motor truck. Twenty-five per cent of the tomatoes, 20 per cent of the apples and 9 per cent of the peppers also arrived in this way. Taking a single week during the height of the season, the truck receipts of peaches were 58 per cent of all peach receipts, apples 78 per cent, tomatoes 52 per cent and peppers 16 per cent.
>
> Further changes and developments are suggested by the opinion of the reporters that the produce-trucking movement will be still greater within a few years.

THREE POSSIBLE SOLUTIONS

Three remedies have been employed to relieve the congestion caused by through-traffic confined to radial roads and checker-board street layouts:

1. The selection of suitable routes following existing streets and the marking of the same to guide through-traffic.
2. The construction of routes on a level with existing streets but partially isolated from local traffic.
3. The construction of giant elevated or depressed highways running through cities like great railway viaducts and eliminating grade crossings.

While method 1 saves time for motorists, it is at best only a partial remedy. While it guides the traffic, it does not relieve the congestion.

The second method, illustrated by Figure 1, is being employed to isolate local from through-traffic. In this arrangement, the express lanes are separated from the local lanes by artificial "islands." Local loading, unloading or parking may take place on the side lanes unmolested by the rapid express traffic. The local cars are turned into the express lanes only at widely separated intervals, thereby eliminating many intersections. Over or under passes permit local motors to pass across the express routes at intervals. Taken all in all, however, the plan is still inconvenient in comparison with the third method. While the planting of shrubs on the islands will give residents on the local roads considerable privacy, there still remain numerous barriers to cross-traffic.

The third method affords the most satisfactory solution. In Figure 2, the reader will observe how an elevated structure, connected by ramps with cross-streets, gives the minimum inter-

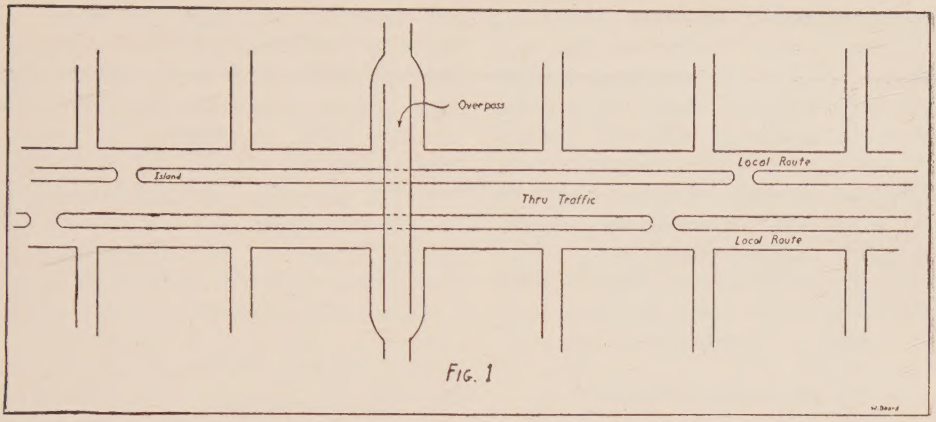

FIG. 1

ference to through-traffic. Ramps are placed only at the intersection of the structure with important highways, the minor roads passing under the structure in tunnels not provided with ramps. To prevent accidents, heavy rails guard the sides of the elevated highway.

For dense traffic, method 3 is the most convenient. It is certainly no experiment since railroads have been following for years the same practice to eliminate grade crossings as a measure both of safety and of speed. By the removal of tracks from the streets, trains can run at reasonable rates through the city without danger from local traffic. Automobile travel has now reached the stage where railway-like construction is becoming a similar necessity.

THE ECONOMIC FACTORS INVOLVED

Obviously an elevated or submerged through-route costs a large sum of money and involves at once the question of economy. The problem cannot be solved by theory alone. Each case must be taken up on its own merits and Mr. F. Lavis, engineer of the New Jersey State Highway Department, has given us an excellent illustration of the correct approach to the subject.

In an article on "Recent Developments in the Construction of Streets and Roads for Heavy Traffic," which appeared in *Engineers and Engineering* for May, 1928, Mr. Lavis describes a new route of thirteen miles between the Jersey City plaza of the Holland Tunnels and Elizabeth, N. J., a project costing over $30,000,000. For eight miles from the tunnels ramps are employed for grade crossing elimination.

Unlike roads evolved from trails or constructed to benefit adjacent land, the new route has been planned more nearly like a railway with a given volume of passengers and freight to be moved from point to point along the lines of least resistance.

The economic factors of traffic movement have been dealt with in detail in their relation to this project. The first question which arises is: What effect will a lengthening of the road have on the cost of operation? Is it economical to detour far around a city? Taking an average composition of 50 per cent heavy trucks, 25 per cent medium weight trucks, and 25 per cent private cars, the cost of operation due to items affected by distance is about 12 cents per mile. With an estimated load of 20,000,000 cars a year, the savings due to a reduction of one mile in highway length would be $2,400,000 a year. Obviously a circuitous route would be inadvisable.

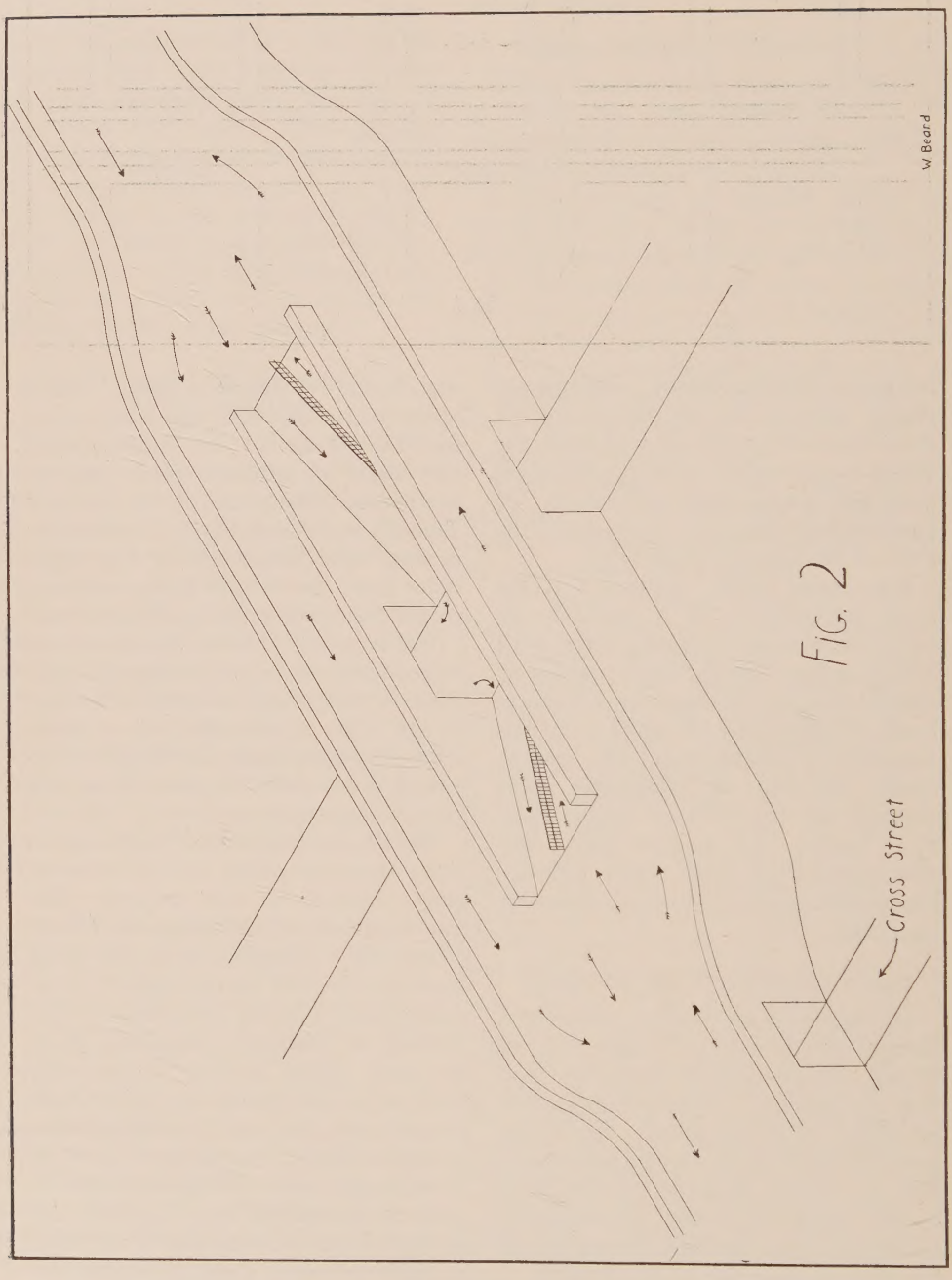

FIG. 2

Besides the question of length, the waste of money from delays at street intersections and the savings accruing from their elimination in the new route must be considered. The cost of operation per minute of the average vehicle of the class using the highway is 2.2 cents. The delays entailed at the intersection of the main highway with an ordinary first-class road should approximate 7,000,000 car-minutes a year, which, at 2.2 cents a minute, involves a loss of $154,000 per annum. This is a sum representing 5 per cent interest on $3,000,000.

In addition to the losses from the delay of cars actually using the highway, there is a further loss resulting from the exclusion of other cars caused by the reduction in the effective capacity of the roadway from interference at intersections. If the elimination of grade crossings, while raising the cost of a highway, will increase the capacity faster than the cost, then the elimination of grade crossings is justified. An estimate of the loss of capacity of the through-route due to crossing delays indicates a reduction of 12 per cent in the traffic flow at times of maximum demand.

If the costs of delays and reduction of capacity are combined, they will be found to equal 5 per cent interest on over $6,000,000. However, the total saving due to the elimination of eight miles of crossings is not as large as the product of the saving per crossing times the number of crossings.

Mr. Lavis concludes with a discussion of the money losses involved, showing that the difficulty of assigning true values to motor vehicle losses, such as the above, is large. Pleasure drivers may not consider it a loss to arrive home a half hour late, while if a truck reaches its destination a half hour after closing time the loss may be large. Exact figures are impossible, but enough calculable factors enter the situation to permit the formation of a fairly satisfactory balance sheet for the three governments involved,—city, state, and national,—which may fairly be called upon to meet the costs.

THE NEED FOR PLANNING

In many cases urban communities are not yet prepared to build such expensive routes as that just described for New Jersey. Localities must, however, plan for the years ahead. Accordingly a study of their problems should be made to determine what thoroughfares will be needed for handling the traffic flood headed toward them. Certain routes should be designed for commercial or express use, with directness and convenience as the first object, scenic value being subordinate. Others may be planned for aesthetic ends and more leisurely use by pleasure motorists. When topography and the extent of the far-flung suburbs permit, routes entirely avoiding the city are to be recommended, especially when they serve not only to make driving more agreeable but also as short-cuts.

The era of house to house roads for through-traffic is doomed. In its place, time is ushering in the application of engineering technique to highway data making possible the construction of wisely planned and economical through-routes.

DOES ZONING PROTECT ONLY THE AESTHETIC SENSE?

BY R. D. MacLAURIN

Commissioner of Trade Waste, City of Cleveland

The author of "Where Zoning Fails" replies to Mr. Herrick's letter in our June issue. :: :: :: :: :: :: :: ::

Zoning is now unmasked by Charles Herrick, city planning engineer of New York City, in the June issue of National Municipal Review, wherein he states that "certain industries at the present day are objectionable. Zoning merely states to people who want to erect dwellings near these industries, 'you do this at your own risk.'" Precisely, zoning is a deception. Zoning has been heralded throughout the land as the benevolent protector of the home owner, and now it is revealed by an advocate of the accepted method of zoning that the home owner has no legal rights whatever as regards property or health protection from trade waste nuisances under zoning legislation. Nor does zoning protect the best interests of industry. This point will be argued later. In view of this inextricable legal muddle created by zoning, it is imperative that such legislation should be amended by providing therein a sound, legal and scientific basis which would protect the property and health rights of each and every member of the community.

The writer wishes to make clear again that the special phase of zoning under discussion pertains to trade waste nuisances such as fumes, smoke, smells, dusts, noxious gases, and offensive water-carried wastes. It is recognized that there are other forms of nuisance than those enumerated, but with these the writer is not concerned.

If the present method of zoning industries is constitutional, which the writer does not admit, it simply means that a subterranean effort has been made under the guise of the police power to legalize public nuisances by the subtle scheme of creating unrestricted nuisance districts and others of so-called more or less degree of nuisance. Assuming that this is a valid exercise of police power, the corollary is obvious and is exactly as stated by Mr. Herrick, that the legal rights of home owners have been abrogated. This places the home owner who seeks redress from public nuisance in the embarrassing position of having to prove the unconstitutionality of this particular application of zoning legislation. The presumption of legality is usually in favor of the legislation as interpreted by the lower courts. Why, therefore, should this intolerable legal and financial burden be placed on individuals when it is the undoubted duty of a municipal corporation to protect the property and health rights of its citizens against public nuisance?

ZONING SAFEGUARDS THE AESTHETIC

The accepted view of zoning is an architectural plan of dealing with municipal problems which offend the sight of the fastidious. The results obtained by the zoning method have some aesthetic merit. Yet in analyz-

ing this subject purely from an aesthetic point of view, zoning fails to protect the beauty of public buildings and parks against pirates of the air which cause disfigurement. Obviously the solution of trade waste nuisances must be dealt with more comprehensively than by mere exclusion, which is superficial and has no scientific basis. Further, trade waste nuisances offend the senses of smell and taste. Why should zoning discriminate between the senses? One would infer from the prevailing zoning idea that human beings were devoid of all senses except that of sight, and it may be added, defective sight. If the benefits of zoning for residential districts are confined to the exclusion of a garage, a laundry, an apartment block, or other structures, then it should be apparent to anyone living in an industrial city that such legislation is not only almost futile but a dangerous menace, as it challenges the common law protection which residents now enjoy.

In a recent nuisance case in Ohio, a Court of Appeals rendered a similar opinion to that stated by Mr. Herrick. In substance, it was that a residential district had no right to encroach on an industrial district. If such opinions are sound law, why should residents in an industrial city be in favor of zoning? Under those circumstances the alleged protection by zoning to the home owner is a delusion. The plain fact is that zoning as applied to industry hopelessly fails, for it attempts to protect the manufacturing interests against residential districts, jeopardizes the common law rights of residents, and places upon them the burden of proving the unconstitutionality of this application of zoning legislation. The writer feels indebted to Mr. Herrick for the additional citation to substantiate his argument and claim, made in a previous article, that zoning legislation in its application to trade wastes does not protect the public generally.

ZONING AND THE MANUFACTURER

Although zoning claims to protect the manufacturer, it can only be legally effective providing such legislation is constitutional. Can zoning make an unlawful act lawful? The writer contends that a manufacturer can only be protected against prosecution for nuisance by actual abatement. Such abatement is invariably profitable for the manufacturer. Innumerable instances may be cited. Frequently the abatement of nuisance results in the improvement of chemical and mechanical processes with a resulting betterment of the product manufactured. There are exceptional instances where the value of the product recovered does not pay a dividend on the equipment investment directly. Yet the breathing atmosphere is so much improved within the works that the earning capacity of workmen is greatly increased, their health protected, group insurance rates diminished, and depreciation of mechanical equipment materially lessened. When these factors are taken into consideration, nuisance abatement is a paying proposition. Further, atmospheric pollution outside the works is prevented, which is a direct benefit to the manufacturer in that it is infinitely better business to avoid the necessity of complaint by one's neighbors than to give cause for it.

"Zoning is based on the assumption that industries are nuisances when in the wrong place." This is an armchair conception of nuisance and wholly at variance with the facts. The writer can cite hundreds of instances in many cities where industries were originally located miles away from inhabitants, yet in a few years the whole territory was developed. Exactly the same

conditions would obtain if zoning were adopted before the city existed. Dust, acid fumes, and metallurgical smoke nuisances may and do pollute the atmosphere for many miles over a city and are seldom what might be called local. When a nuisance is local it is just as damaging under zoning as without, for many industries seriously damage the property of neighboring industries in addition to residences. It is legally immaterial as far as damage is concerned whether the property is residential or industrial.

"AEROSOLS" ARE PUBLIC NUISANCES

Hundreds of tons of dusts and fumes are emitted into the atmosphere daily in industrial centers. These dusts and fumes do not disperse vertically in the atmosphere, so how can such effects be local? Owing to the physical and chemical properties of "aerosols," the particles are widely dispersed and finally become invisible. Yet these invisible particles remain in the air for long periods of time and are the particles most detrimental to health. Further, these invisible particles are responsible for the formation of fogs and mists which shut off the sunlight. Zoning makes elaborate provisions in building design so as to provide light yet pays no attention to fundamental causes obstructing the reception of light. In manufacturing centers industrial "aerosols" are responsible for a loss of 30 to 40 per cent of the beneficial rays of the sun. Further, these vast "aerosols" which at times blanket a whole city destroy public parks, public and private property, and drive residents to seek refuge outside the city limits. The ultimate economic result of such atmospheric pollution is that the public treasury is depleted of much-needed tax money because of the depreciation in property values. If industries are nuisances only when in the wrong place, what legal status has a manufacturer whose property is being damaged by another manufacturer in an unrestricted zoned area? The writer would like to hear from Mr. Herrick on this point.

Pure air for breathing purposes is a natural right of every citizen. This inalienable right is intimately related to the preservation of health and comfort. No one expects to have mountain air for breathing purposes in an industrial city; but residents have a right to demand that industry shall use the best practical means known to the art for the abatement of dusts, fumes, and noxious gases, irrespective of location. Further, in cases where a practical solution of a problem is not known to a particular art, citizens have a right to demand that every effort shall be exerted on the part of industry and a municipal corporation to determine a satisfactory method to solve the problem. Moreover, in the absence of zoning under the common law, the courts have ordered in the past that the best practical means shall be applied to prevent nuisance.

NEEDED EXTENSIONS OF ZONING LAWS

Mr. Herrick suggests that "other laws" will have to be employed to deal with trade waste nuisances. As zoning presumes to supersede the common law of nuisance and pervert the police power now employed, what laws have you? In the past, nuisance has been dealt with under the police power by commissioners of health. Then zoning presents itself and alleges to be ordained with the same purpose, draws a few maps setting up boundaries where nuisance industries are now located, and says "this is an unrestricted district." The nuisance is now abated. All of which is very simple indeed. Then the residents are saluted: "If you wish to continue living

in this district, 'you do so at your own risk.'" Further, a city council, under the police power, heretofore enacted special ordinances dealing with the abatement of trade waste nuisances. By zoning under the same police power and on the same grounds the same city council creates unrestricted nuisance districts. By one legislative act an attempt is made to legalize nuisance, and by another legislative act to declare that an industry located in a legalized district is a public nuisance. It would appear, therefore, that zoning has exhausted all the possibilities of legal gymnastics.

The time to prevent nuisance is before it occurs. Zoning allocates industries to certain specified districts. Obviously the processes to be conducted are inseparable from the buildings. Yet zoning makes no provision for the control of processes. The present procedure is as follows: A manufacturer applies to a city building department for a permit to erect buildings for manufacturing purposes. Great care is exercised regarding every phase of the construction. Every nail and bolt must be in a specified place. When all details are complied with, a building permit is granted the manufacturer. However, the manufacturer does not receive a permit to conduct business. Here is where zoners turn "thumbs down."

For instance, if a permit were granted to build a cement plant, the manufacturer would merely have a permit to construct the plant and would not have a permit to conduct the process. If the manufacturer failed to provide adequate facilities for dust and fume collection, and said dust and fumes polluted the atmosphere for miles throughout a city, the writer submits that the building permit, insofar as protecting the manufacturer against nuisance is concerned, would be of no avail irrespective of locality. Then how may the interest of the manufacturer and the public interest be protected?

SUGGESTED ADDITIONS TO THE BUILDING CODE

As the zoning law becomes part of the building code, the latter should be amended as follows:

A permit shall be required for the conduct of each and every business or manufacturing operation which results in or is attended by the emission of dust, fumes, odors, noxious gases, or offensive water-carried wastes, and no such business or manufacturing operation shall be permitted to be carried on unless the permit hereby required shall have been first obtained. A permit shall be issued provided each and every business or manufacturing operation shall be so conducted and shall employ the best practical means known to the art for the abatement and elimination of dust, fumes, odors, noxious gases, or offensive water-carried wastes, and such conditions of the business or manufacturing operation must be evidenced by the written approval of the commissioner of health.

When adequate means for the abatement or elimination of dust, fumes, odors, noxious gases, or offensive water-carried wastes, are not known to the art, it shall be the duty of manufacturers conducting such operations to investigate and provide ways and means for abatement in cooperation with the authorized officials of a municipal corporation, and for the conduct of each and every such business or manufacturing operation, a temporary permit may be issued.

A permit issued by a municipal corporation on the above terms would be a legal permit for a manufacturer to conduct business. It would result in the protection of industries individually and collectively, and the public interest generally.

THE LONDON REGION

BY HARLEAN JAMES

Executive Secretary, American Civic Association

The administration of the London Region is centralized in the London County Council. :: :: :: :: :: :: :: ::

Greater London is not an enterprising metropolitan center which has pushed its way out into the rural regions. It is a nest of old towns and villages which have spread until the fringes of population overlap each other. Many of these old communities still preserve their ancient characteristics. Others have been transformed through changes in use. As in other large cities, residential areas have been displaced by the outward push of business. The city of London is hardly more than a square mile in extent and, while it accommodates like the loop district of Chicago an enormous day population, its night population has grown less at each succeeding census since the eighties.

From this square mile, the site of an ancient city and market place, the scene of centuries of struggle between the government and the governed, the birthplace of legal, social and economic institutions which dominate the English-speaking dominions of the world, there has grown the modern metropolis of London; but the old city still preserves many of its time-honored rights and traditions. The lord mayor is the ceremonial representative of all London as well as of the city. The companies which have developed from the old guilds still exercise a potent influence on the development of the town. The city has a long history of achievement in education, public health and philanthropy.

ADMINISTRATION CENTRALIZED IN THE LONDON COUNTY COUNCIL

In 1888 Parliament set up elected county councils throughout England, and London was included under the law. The Metropolitan Board of Works, which had been created as a result of an act of Parliament in 1855, was superseded by the London County Council. The council inherited from the Metropolitan Board of Works authority over the main drainage, traffic, execution of street improvements, construction of bridges, tramways, fire brigade, housing of the poor, supervising and laying out of streets and construction of buildings, and provision and maintenance of parks and open spaces. The council also inherited from the justices certain administrative powers. In 1903 the council took over powers of the London School Board and was given additional powers relating to education.

The metropolitan borough councils have charge of paving and other street improvements, local drainage, collection of refuse and other matters of purely local import. The police are controlled by the home secretary through the commissioner of police of the metropolis or by the city corporation.

The London County Council administers an area of 116.9 square miles which in 1921 had a population of 4,483,249. The area over which the

police have jurisdiction is much larger, extending over 692.9 square miles and containing a population of 7,476,168. The water area is about five times as large as the county area, but smaller than the police area.

In the seventy years between 1851 and 1921 the population of the area now administered by the London County Council increased from 2,363-341 to 4,483,249 and the assessed value of property quadrupled, increasing from twelve million odd pounds to forty-eight million odd pounds. But in spite of this great increase in population, the death rate has steadily decreased from 23.7 per thousand in 1851 to 20.5 in 1881 and 15 in 1911, with further decreases in later years. This is the result of modern public health control.

THE COUNCIL'S PERSONNEL

Greater London is divided into sixty-one constituencies. Sixty of these return to the council two members each and the city of London four, making a total of 124 councillors who in turn choose 20 aldermen, giving a total membership on the London County Council of 144. In 1923 the number of voters was 1,887,898, representing a broad extension of the suffrage.

ADMINISTRATIVE METHODS

The business of the council is transacted through its committees and by means of administrative departments. With 3,000 employes in the sixteen departments, 20,000 teachers, 2,000 in the uniformed fire brigade and special staffs of public undertakings, the total staff of the council comes to about 50,000.

The council claims credit for the clearing of fifty acres of slums and is in process of clearing an additional thirty-four acres. It has erected 18,000 tenements with accommodations for 120,000 persons, and is continuing this work. It supplements the work of the metropolitan borough councils in providing residential treatment for tuberculosis. It maintains 1,000 public elementary schools for 700,000 boys and girls, and maintains or helps to maintain sixty-seven secondary schools for 31,000 boys and girls, 300 technical and evening schools for 250,000 pupils, and gives assistance to the University of London.

The council operates tramways aggregating 160 miles on which 700,000,-000 passengers are carried annually. Twelve million pounds have been expended for widening streets. Ten bridges have been built over the Thames and a free ferry established at Woolwich.

The council administers 120 parks and open spaces in and near London aggregating eight square miles, a little less than seven per cent of the total area. A curious reflection of metropolitan life is shown in the statistical lists of permits issued during a recent year for 7,000 petroleum stations, 820 employment agencies, 800 massage establishments, 800 practicing midwives, 85,000 shops inspected under the shops acts, 200,000 motor cars and 135,000 driving licenses. The council is reponsible for verifying and inspecting over 2,000,000 weights and measures, and for testing the gas used and the meters through which it is supplied. In all, the annual budget of the council is in excess of 26,000,000 pounds.

The area under the jurisdiction of the council forms a drainage basin, traversed by the Thames and many small tributaries, most of which have disappeared under ground. No city in the world possesses more intimate charm or more architectural aspiration than London. The famous Thames embankment makes the river a part of the artistry of the scene, dominated on

one side by the stately houses of Parliament and magnificent Westminster Abbey and on the other by the modern buildings of the London County Council. The quaint courts sequestered in the old city are ever a delight to visitors from the New World.

THE RESULTS OF GOOD PLANNING

The town planning acts have exercised a powerful influence over the growth of London. In the schemes of the county of London, it is the rule for every house to have its own garden, and in most cases a garden front and back. The number of houses to the acre is limited to about twelve, whereas it was not uncommon to find forty per acre in the older schemes.

A very real effort is being made to preserve the individual character and the natural features of the villages which are being overtaken by the tide of population flowing out from the heart of London; but it is realized that the once-lovely rural roads in the vicinity of London are suffering from some of the same invasions which are ruining the rural roads of the United States, and that the open country is being pushed farther and farther away from the great mass of the people living in the inner suburbs. Before it is too late, it is urged by Mr. Forrest, the architect of the London County Council, that a ring of park land should be acquired within easy traveling distance of the center of London. In this ring should be included such unspoiled rural oases as the Regent Canal and the Wandle River.

Twelve joint town-planning committees have been recently established in the region just outside of the county of London, and an effort is being made to work out, through a major committee advocated by Mr. George Pepler, the realization of the dreams of the town planners "that the planning problems of the capital city of the Empire and its environs might be dealt with over a field sufficiently large to make a fruitful solution possible."

Arterial and by-pass roads are being opened up and proposed for further relief of the traffic congestion occasioned by the increase of the population still attached to the city by economic or social contacts.

London has never adopted the American skyscraper. Its business buildings are low, solid, and dignified. Looking down the vista of Regent Street, with its new buildings, the pedestrian may see the sky and thank Providence and good planning.

COUNTY CONSOLIDATION IN TENNESSEE

BY J. W. MANNING

Vanderbilt University

The successful consolidation of two counties gives impetus to the plan to merge the ninety-five counties of Tennessee into eleven new units.

BECAUSE county government costs the people of Tennessee not less than $20,000,000 per year, efforts are being made and suggestions are being offered to reduce this item by reducing the number of counties. The annual cost of county government is nineteen times the cost of state government; therefore it is not difficult to see why tax rates in some countries are as high as $4.00 on $100 of assessed valuation, while the state rate is only twenty cents. Granting that the cost of local government must, of necessity, be higher than the cost of state government, is there any valid reason for such a marked difference?

Certainly one of the best ways to reduce this enormous cost of county administration is to reduce the number of counties. To abolish the county is a plan which will receive little encouragement; but practical politicians, as well as political theorists, are coming to demand a reduction in the number of counties, and possibly a reorganization of the county's administration.[1] It is altogether logical that such a movement should arise in Tennessee. This state has inherited the English county in as pure form as any commonwealth which can trace its institutional origins directly or indirectly from the mother country; yet the state government of Tennessee today is a notable example of what can be done in state administrative reorganization.

The governor of Tennessee, Henry H. Horton, looking toward a reduction of state taxes, recently named a state tax commission, composed of some of the best known and ablest men of the state. The chairman of that commission is T. R. Preston, president of the Hamilton National Bank of Chattanooga, president of the American Bankers' Association, and one of the best informed men in the nation on the subject of taxation. Mr. Preston thinks that the state's interest could best be served by reducing the number of counties, thus eliminating a great deal of the overhead cost. The number of counties in the state might be reduced by the natural process of absorption of a small county by a large county or by the more artificial method of consolidation of all the counties into a smaller number of local units. Both methods have been suggested for Tennessee, and the process of absorption has actually begun.

TWO COUNTIES MERGED IN 1919

In 1919 two counties consolidated; in 1927 the county courts of two counties agreed to a consolidation, and a measure requesting permission to consolidate will be presented to the next legislature; two state officers have

[1] In section 9 of the New York *Times*, March 11, 1926, there appeared an article by J. C. Young outlining a similar plan for the state of New York, suggested by Governor Smith. His plan is to recast the sixty odd counties of New York into thirty-seven units, grouped into regions of common interest, thereby reducing the cost of local government and centralizing administration so that local government will be more satisfactorily carried out.

suggested a plan for redistricting the state, reducing the number of counties from ninety-five to less than fifty. This shows that some attempt is being made to explore that "dark continent of American politics," and to bring the county to the same level of reform as state and city government.

In 1919 Hamilton County, with Chattanooga as the county seat, absorbed James County. The act of the legislature provided for a referendum to be voted on only by the people of James County, the unit both in area and population. The vote which resulted was a ten to one victory for annexation.

THE RESULTS OF CONSOLIDATION

This experiment of the absorption of a small county by a larger county has proved successful. The people who live in what was once James County now pay about one half the tax they paid before the absorption. Prior to 1919 James County had less than two miles of paved highway; now it has between forty and fifty miles. Schools which previously operated between three and four months in the year are now in session eight and nine months, and the one-time James County court house is being used as a public school building. Before the consolidation James County had practically no hope of securing manufacturing plants; but now several plants have been established and others are expected to begin operation in that part of Hamilton County which was once James County because of lower taxation. It is also noteworthy that while expenditures have increased, due to more improved highways and longer school sessions, taxes have been lowered. This emphasizes the fact that the often useless overhead expense of a governmental unit is a larger item than educational and highway improvement.

In such consolidations as that of James and Hamilton Counties, one might conclude that the large county profits most, but this experiment has proved quite the contrary. *Farm and Fireside* recently sent a staff writer to Chattanooga to investigate conditions in the new Hamilton County, and he concluded that the people to be most benefited by a consolidation of a large and small county are the people of the smaller unit.

Meigs County, which adjoins James County, has looked upon this successful experiment with a great deal of interest. In 1927 there was a formal joint meeting of the courts of Hamilton and Meigs County, and it was unanimously agreed between the two that Meigs would petition the next legislature to pass an act abolishing that county and annexing most of it to Hamilton. This desire on the part of Meigs County can easily be understood when we recall that the tax rate now is about $4.00 on the hundred, while in Hamilton it is $1.40.

STATE-WIDE CONSOLIDATION PROPOSED

The chief reason for the absorption of James by Hamilton and the proposed absorption of Meigs by Hamilton is tax reduction, which can be brought about by the abolition of a number of useless and duplicate offices and the centralization of control. With this same idea in mind, A. P. Childress, state tax superintendent of Tennessee, in answer to the request for suggestions as to means of reducing taxes from Chairman Preston of the state tax commission, proposed that the ninety-five counties of the state be consolidated into eleven units, each to be grouped around a town of some importance near the geographical center.

According to this scheme ninety-five counties would be recast into eleven. Eighty-six county seats would be

abolished outright, nine would be retained and made the county seats of the same number of new counties, while two new county seats would be created—Johnson City in George Washington County, and Dickson in Sam Houston County.

THE POTENTIAL BENEFITS

Whether we reduce the number of counties from ninety-five to eleven or from ninety-five to fifty, it is certain that a great deal of the inexcusable waste of the taxpayers' money could be avoided, as in James County, and the larger counties administered at a very little, if any, greater cost than any one of the present number with its long roll of unnecessary magistrates and elected officials. After all is there any reason for supporting out of taxation, or otherwise, a set of petty officers for a district as small as 250 square miles, with a population of 3,000, when it is possible to devise a government of the same number of offices, and one just as good and just as responsible to public control, which will care for a section ten times as large?

Under the present alignment of counties each of the ninety-five units supports on the average twenty officers, to say nothing of minor employees on the payroll, at an average cost of some $200,000. For the total number of counties this means 1900 chief officers and an annual expenditure for that item alone of $19,000,000. Even though the present plan of organization be retained, the cost of the eleven units, based on the same estimate, would certainly not be over $2,200,000. This saving to the taxpayer in itself would be worth the experiment.

OBJECTIONS TO BE OVERCOME

Knowing the rural political mind as we do, it is not difficult to anticipate objections to the plan of county consolidation, especially in the rural sections. Before any such plan is accepted, public opinion must be changed. But the secret of educating rural public opinion is ordinarily to be found very close to the purse strings of the rural dweller. If the average man can be shown that it costs him less to be radical than conservative, he will quickly change his views. A potential reduction from $19,000,000 to $2,200,000 in the annual cost of local government certainly speaks for itself.

Mr. Childress believes that a great deal of opposition will come from the sentimental attachment to present county names, even though many of them mean little to the great majority of people living in the area whose name they cherish. For example, we doubt if there are fifty persons in Davidson County who know why or for whom their county is called Davidson. Mr. Childress proposes to overcome this sentimental objection by naming his new units for some hero or historical personality well known to the majority of Tennesseans. The eleven suggested county names are: George Washington, John Sevier, Robert E. Lee, Andrew Johnson, Benjamin Franklin, Andrew Jackson, James K. Polk, Sam Houston, David Crockett, James Madison, and Bedford Forrest.

On the practical side some objections are to be met. When Mr. Childress announced his plan he anticipated the objection that trade would be drawn from the present centers to the new county seats; and he answered it by stating that such trade transference is already taking place by reason of the good roads system. Possibly the greatest stumbling block in the way of reform is the opposition of present county office holders, many of whom would revert to private life upon the

adoption of this plan. Some opposition might be allayed by permitting the office holders to serve out their terms before the introduction of the new plan. This group now dominates the whole county organization, and would work to defeat a plan of county consolidation. But we must hope that there are enough intelligent people to disregard the dictates of a political group when they are convinced that it is to their own financial interests to do so.

OUR AMERICAN MAYORS

XI. FRANK HAGUE: MAYOR-BOSS OF JERSEY CITY

BY E. E. SMITH

Barnard College, Columbia University

After fifteen years of complete subservience, will Jersey City throw off the yoke of the Hague machine? :: :: :: :: ::

It is not often that a mayor is boss. Still less often is a boss mayor. Jersey City has both in the person of Frank Hague. A life-long politician, on the public payroll since he was of age, Frank Hague learned the game from ward politics up. By adroitness and leadership he has built up one of the strongest machines the state has ever seen.

To understand how he secured and maintains his power it is necessary to know something of Jersey politics. The state is neither preponderantly Democratic nor Republican. In national elections, like other industrial states, New Jersey tends to go Republican. But its large urban population has recently put the Democrats in a position to dispute the governorship. This latter strength is partly balanced in off years by the firm grasp the Republicans have had on the state senate. The senate is made up of one member from each of the state's twenty-one counties, three of which have a total population in excess of the combined populations of the other eighteen. The rural Republican counties are thus able to exert an influence out of proportion to their population. The senate must confirm the governor's appointments, and when the governor and the senate are of opposite political faiths some *modus operandi* must be developed. This the Republican boss, Edge, and the Democratic boss, Hague, have succeeded in devising.

THE INTER-PARTY WORKING AGREEMENT

United States Senator Edge, former governor and state senator of New Jersey, is the leader of the powerful Atlantic County Republican machine, which thrives in an area that includes Atlantic City; from this nucleus Edge has matured the strong state-wide machine which he controls today.

Mayor Hague is the Democratic state boss because he is boss of Hudson County, which contains more than half the Democrats of the state; he is boss of the county because he is boss of Jersey City, which contains more than half of Hudson's County's population.

A gentlemanly reciprocity, by which neither machine will violently attack

the other, has worked to the great personal and political advantages of both bosses for more than a decade. Hague has been allowed to run things in his county undisturbed by any state action except one or two sham legislative probes which resulted in nothing. Edge has been secure in his enjoyment of federal and state patronage.

The most recent indication of collusion was the spectacle of Hague Democrats in Hudson County voting for the Republican gubernatorial candidate, Senator Larson, in the recent state primary. "Hagueism" had been made an issue by one of the leading Republican aspirants for governor, ex-Judge Carey of Jersey City, and it is not unusual, when the issue between popular rights and corrupt machine-ruled government is clearly drawn, to find the two bosses of opposite parties fighting on the same side. To quote the press:

> The state-wide primary registered a victory for professional politicians and as a result, New Jersey has two machine tickets from which to choose a governor and a United States Senator at the general election next November.

The two men, by virtue of their state leadership, are also powerful factors in their national parties. Senator Edge is not only a strong voice in the counsels of the Republican party, but had even been mentioned as a possible presidential or vice-presidential nominee. Mayor Hague is vice-chairman of the Democratic national committee and is manager of Governor Smith's campaign in several eastern states.

THE MAYOR'S RISE TO POWER

Frank Hague was born fifty-two years ago in the old "horseshoe" district of Jersey City. His parents were poor, ignorant folk, and Frank's education came to an end in grammar school. He held numerous jobs of no consequence and is reputed to have been a member of various gangs of none too savory reputation. Ward politics early attracted him. His first political job was that of constable in the county court house at three dollars per day. Later he became custodian (a polite term for janitor) of the city hall. He was by this time the boss of the second ward, having wrested the leadership from another. In 1911 he sought a place on the street and water board, and was nominated and elected.

Wide World Photos

MAYOR HAGUE

By this time the old boss, Bob Davis, who had held sway for many years, was dead, and Hague was gradually building up a large personal following by skillful distribution of patronage. He used his influence as head of the street and water board to secure jobs for followers and favors for big corporations which were large consumers of water. A break occurred between Hague and the Democratic mayor, Wittpenn, and the former became active in the movement for commission

government which was sweeping New Jersey during Governor Wilson's reform administration.

The movement was successful, and in 1913 Hague became a candidate for city commissioner. There were ninety-two candidates in all, from which ten were chosen in the elimination primary; five of the ten chosen were the Wittpenn candidates and the other five were independents, including Frank Hague and Mark M. Fagan, a former Republican mayor with an invisible record. The people, in a spirit of reform, were urged to vote against the Wittpenn candidates and to elect the five independents. The independent ticket was swept in and with it Frank Hague and A. Harry Moore, a machine Democrat whom Hague later made governor of the state.

On the organization of the commission Mark Fagan was chosen mayor and Hague secured for himself the strategic position of director of public safety. He was already boss of the second ward and this new post offered him an excellent opportunity to extend his sphere of influence. He instituted a notorious delinquency trial system; many demotions, promotions and changes took place until at length the city commission sought to curb his power by requiring that all of his appointments be confirmed by it. But notwithstanding this check, Hague had accomplished his designs when in 1917 with A. Harry Moore he was able to choose and elect his own city commission ticket. One Michael Fagan was found to oppose Mayor Fagan and the ancient political trick of running candidates with the same name for the same office was again employed. The political element represented by Mark A. Fagan was eliminated from the city commission and Hague was chosen mayor.

As mayor he quickly adopted the policy of stifling an opposition in both parties by placing the leaders of the opposition on the city or county payroll. By creating an untold number of jobs he perfected a strong political machine which has produced increasing majorities at each election until the Republican party in the city is practically extinct.

A CHARACTER SKETCH

At this point one naturally pauses to ask what sort of a man Hague is; what are his personality, his good qualities, his capacity for leadership, and his bad qualities.

Mayor Hague is a tall, slim man of fifty-two. He dresses with excessive care. It is said that at a New Year's reception at the City Hall one can pick out the members of the Hague machine by their clothes, for they all dress like Hague. Hague has outgrown his own crowd; he is not a "good mixer." Both he and his wife are suspected of social ambitions. His speech is curious. He pronounces words correctly and uses them accurately — in his ambitious youth he took lessons in public speaking. At grammar he is somewhat less apt—the plural form of verbs scarcely exists for him. His excessive profanity arouses resentment, but he has never been known to smoke or drink. What impresses one most, perhaps, is his alert, intense countenance conveying the impression of an iron will. He fully appreciates the political utility of fear and bullies his following into obedience.

In the coal strike of 1922 Jersey City suffered, though as a railroad center there was plenty of fuel in the yards. Hague stationed a policeman at every ferry and every road leading out of the city, and turned back every load of coal that was being taken beyond the city limits. A big coal company in New York City telephoned and asked

by what right he did it. "By the right of the night stick," he replied. When he was looking for a home for the Mothers' Institute, the former clubhouse of Bob Davis's machine of which he was once a humble member was for sale at auction. Hague warned everybody that he wanted it for the city and bid it in for $300. There was no competition. Today the property is worth $100,000.

HIS POLITICAL METHODS

There are two ways of looking at this "benevolent despotism." We may commend the humanitarian motives of the mayor, but we must not lose sight of his political shrewdness in "catering to the people." It is good politics to build a Mothers' Institute, a hospital, or a baby clinic.

Hague, as we have seen, does not differ greatly from the typical boss; but the Hague machine, unlike the more celebrated Tammany across the river, is a one-man organization. If Olvany were to die Tammany would live on, but if Frank Hague were to die his machine might speedily crumble. Why? Because Hague has never tolerated in the organization any one who is superior to him in any way or who can stand alone. He has demanded submission and subservience to the dominant Hague will and has trained none to take his place.

In order to understand what the Hague machine is like and how it functions, it is necessary to know something of the socio-political makeup of Jersey City. Jersey City is the county seat and center of Hudson County and because of its location is one of the key cities of the United States. It is an industrial city and has a large industrial population, two thirds of which is of foreign extraction. The Irish group, constituting about 23 per cent of the total population, is politically dominant and the influence of the church tends to unify its activities. Hague is Irish, as are three other members of the city commission, and in the distribution of patronage and spoils the Irish have received the lion's share. The Italian and Polish groups, numbering about 35 per cent of the population, can be most completely delivered by their leaders on election day.

These groups have been organized into clubs and their leaders have been kept in line by favors, jobs, and threats. One of the mayor's chief lieutenants is an Italian, Michael Scatuorchio, who holds the garbage contract. The following bit of satire, from the pen of a brilliant young dentist, appeared recently in his column in the *Jersey Journal* of Jersey City:

> The time draws near for Mike Scat's summer outing; this is an annual event in Jersey City for the Gaekwar of garbage. This year he expects to lead 10,000 Italian-Americans at $6.00 a head. A little multiplication and the amount becomes $60,000. Under a broiling sun Mike parades the poor lads out of the village and past the city hall where they are reviewed by our debonair mayor. As Mike passes Frank, he winks. Hankus returns the greeting with another wink. They understand each other perfectly; $60,000. In cold cash. On a hot day. The simple-minded folk who parade behind Mike really do not know what it's all about. Most of them have been in America only a few years. Many of them speak very little English. But Mike has driven home to them the importance of Hankus, the first; and that next to the sovereign ruler comes Scat, the first. The poor lads are soaked $6.00, given a hat, a cane, a footload of corns and bunions, a ride on a scow and a Sea Girt meal (one sandwich with microscope, a slice of cake and all the water you can drink). Most of them lose a day's pay which they cannot afford. Every Italian-American city or county job-holder has to hand over for twenty-five or thirty tickets each; whether sold or not they have to pay for them. Every Italian-American Democratic Club has to take 300 to 500 tickets. If they refuse, Mike will tell Frank and Frank will tell the detectives and the club is raided.

There are in Jersey City twelve wards and two hundred and forty election precincts; each ward has a responsible leader or ward boss appointed by the organization for valuable services rendered and for ability to deliver votes. Each precinct contains a certain number of qualified voters and it is the job of the committeeman to get these voters out on the primary and election day and to see that they vote "right." To quote Plunkitt of Tammany Hall, "there's only one way to hold a district; you must study human nature and act according." To do this entails large expenditures for the bosses' benefactions; the turkeys at Christmas, the police court fines, the loans that are never repaid, and all sorts of kindly attention to the poor are costly. Where does the money come from? The main source of supply, the "working capital of the business," is graft.

In Jersey City, as in other cities, the chief sources of graft are the sale of privilege and protection, favoritism in law enforcement, payroll and bid padding, and the awarding of public contracts. This system is in practice throughout Hudson County. The New York *Herald-Tribune* for July 13, 1928 says:

> Juggling of city contracts by Mayor Frank Hague's Democratic machine for the financial benefit of political favorites was revealed before the New Jersey legislative investigation committee, sitting in the city hall, Jersey City, yesterday, in the reluctant testimony of a half dozen witnesses who were beneficiaries of Hague's favoritism in Hoboken.
>
> It was developed that James J. McFeely, a brother of Bernard N. McFeely, city commissioner of Hoboken and Democratic boss, received a contract to remove garbage and ashes for $486,260 and that the price was almost 300 per cent higher than the amount the city paid for the same work in the previous five years. It was also developed that bids at a lower price were rejected in the face of a decision obtained by one contractor from the Supreme Court and that the cash bond required for the fulfillment of the contract was boosted to $25,000 so that McFeely, who obtained the money from a sister, alone would have a chance to get the job.

In addition to these customary methods of graft the Hague machine has worked out several new and more subtle methods. Great publicity has been given of late to the "three per cent" which the "payroll boys" have to hand over to the party organization. This refers to the annual fee or "dues," amounting to from three per cent to five per cent of the salary of every city and county employee which, it is alleged, the machine demands for party expenses. It has been repeatedly charged that the property of certain wealthy Hague supporters has been greatly under-assessed while that of citizens hostile to the machine has been subject to exorbitant taxation.

THE MACHINE DOMINATES THE COURTS

The administration of justice throughout the state is in the hands of the machine, due to Hague's ability to dictate the appointments of all judges and prosecutors through his control of the executive branch of the state government. It is significant that the three Common Pleas judges in Hudson County are Democrats, notwithstanding the fact that they were confirmed by a Republican legislature having in the senate three Democrats and eighteen Republicans.

From time to time the press, both state and local, has called attention to the evils of a system, known as "Brandleism." It takes its name from T. M. Brandle, who is said to be one of Hague's chief retainers, and who by controlling numerous labor unions, has come to be recognized as leader of union labor in Hudson County. He has been accused by the press of "throttling trade, dominating industry, and peoniz-

ing labor for the benefit of the machine," by calling strikes on certain contractors who refuse to fall in line, and by granting favors to those on the "inside." He owns a large bonding company which is also highly profitable, for unless the building bond insurance business is given to him he can cause building operations to be stopped. He is said to have the power of the machine behind him.

THE CONTROL OF ELECTIONS

The control of election machinery is a factor which must not be overlooked, because it helped to put the machine in power and because ballot box stuffing and other frauds have been charged recently in both municipal and county primaries. Prior to the New Jersey primary in May, 1928, it was disclosed by investigators that thirty-four persons had registered from vacant lots, saloons, boat houses, and rooming houses where they had never lived, or were not living at the time. Assistant prosecutor John Drewen asked that the thirty-four fraudulently registered names be striken from the voting list. When the evidence on all the cases had been submitted, a Democratic member of the county board of elections declared that the thirty-four names be placed on the challenge list, rather than be striken from the voting list. The two Democratic members of the board voted to place the names on the challenge list while the two Republican members who had favored striking the names from the voting list, voted against it. The names were allowed to stand.

CASE COMMITTEE INVESTIGATES

Immediately after this primary, in which it is alleged that 25,000 votes were illegally cast in Republican ballot boxes by Democrats, an inquiry was called for. The Republican state senate, already aroused by alleged illegalities in the granting of bank charters, appointed a committee headed by Senator Clarence Case of Somerset to investigate the government of Hudson County and the primary. As this article goes to the press the Case Committee reports the following items to Attorney General Katzenbach and his vote-investigating grand jury:

> The sworn story of a Democratic housewife who said she had voted as a Republican in the last primary "as a favor" to William McGovern, Democratic boss of her district, who had sent her a turkey for Christmas.
>
> The story of an Italian voter, who could neither read nor write English, that two election officials had gone into a booth with him and given him a Republican ticket when he had intended to vote Democratic.
>
> The testimony of four witnesses that they did not sign a Democratic nominating petition on which their names appeared, and the testimony of the two candidates whom the petition designated that they did not know they were on the ticket.
>
> A list of 117 voters with a record which the committee's attorney said showed *prima facie* evidence of violation of the election law.

THE RESULTS OF HAGUE RULE

What has the Hague administration done for Jersey City in fifteen years rule? Is the city prosperous? Are her citizens contented? What is the trend of public opinion?

Today Jersey City has the largest per capita net debt of any city in the country. In 1917 the net debt of the city was $26,000,000; in ten years it had risen to $76,000,000. The per capita net debt has risen during this period from $85 to $241. This state of affairs is due primarily to the rapidly increasing cost of municipal and county government. The policy of putting political opponents and partisans on the payroll has increased the cost of local government so that it is now 30 per cent higher than the average

for cities in the United States having 300,000 to 500,000 population. In 1922 the per capita cost of local government in Jersey City was $54, and four years later it had jumped to $76. Bond issues for public improvements have been made from time to time, but the extravagence with which money is spent is notorious. Jersey City in the last five years has provided less permanent improvements out of taxation than any other city of its size. This despite its heavy budget. On the average, other cities of its class have put aside $13 per capita per annum for permanent improvements or for the reduction of permanent improvement obligations. Jersey City has been able to put aside only $2 per capita per annum. The failure of the city to collect a high percentage of the taxes levied has caused the city's net liability on account of tax revenue bonds to increase at an average rate of $1,800,000 per year for the last eight years. It is significant that, despite the great amount of taxes not collected and in arrears, Jersey City has actually collected more taxes per capita than the average for cities of her size. In other words, the tax levy in Jersey City is so heavy that, regardless of the failure to collect an unusually large amount of it, the city still does collect a little more than other cities which are not so deficient in their collections.

The Fusion League of Hudson County recently charged that the city government is "honeycombed with job-holders and sinecures who are on the payroll of the city and who do no necessary work for the city whatsoever," in a resolution demanding that Mayor Hague drop from the city payroll the above-mentioned office-holders. The resolution declared that large sums of money could be released for municipal improvements and that taxes could be reduced if the changes were made.

During the fifteen years of Hague's dictatorship the electorate has been reduced to a state of subservience and demoralization, and the civic spirit of the community has been crushed. Today city, as well as county employees, dare not speak their minds for fear of losing their jobs; business men and corporations have been silenced by the power of the machine to "ruin" them; taxpayers dare not dictate the use of their own money lest they be driven from the city by exorbitant assessments. In one case a man who acted as chairman of a taxpayers' meeting to protest against the tax rate, found, when he received his tax bill, that his nonconformity had cost him $5,000.

A REACTION IS NOW SETTING IN

Throughout this period the community has been without the leadership of the press, for it, too, has been a victim of the fear mania; however, after fifteen years of repression a natural reaction has set in. The *Jersey Journal*, Jersey City's only daily and the leading newspaper in Hudson County, has taken a definite stand against the Hague machine. Several times a week this paper publishes a column written by Dr. Francis L. Golden, who by his satirical observations on Jersey City politics has done more, perhaps, than any other single factor to arouse the inhabitants of this "Hague-ruled Moscow." It is said that "Czar" Hague threatened the newspaper with destruction when it refused to discontinue the column by "F. L. G." The editor of the *Jersey Journal* says:

> Every week we receive on an average of one hundred and fifty letters from indignant citizens, complaining of one thing or another. Taxation complaints, construction complaints, school complaints, criticism of streets, criticism of officials are in the pile, and the only interpretation we can put on this mountain of mail is that

our citizenry are up in arms over the municipal management.

One citizen writes as follows: "It seems to me that Hague and his henchmen have a misconstrued conception of the word 'democracy,' under whose banner they 'labor.'"

Mayor Hague's lack of discretion in flaunting his wealth before the tax-oppressed city has further incensed the population. The people are asking how it is that the man, who not so very long ago was janitor in the city hall, can own a $300,000 mansion at Deal, N. J., and one of the most costly apartment houses in Jersey City on a salary of $8,000 a year as city commissioner. The *Jersey Journal's* satirist has humorously summed up the situation as follows:

> While dwelling on François, I am reminded that he came up from Palm Beach a month ago in a private car. Such luxury entails the expenditure of $5,000. Frank only draws $8,000 a year salary, and you can't go around the country paying $5,000 for a short ride in a private car on that salary. The Pullman Frank rode in was the "National," so suggestive of his ambitions. But if François did pay out $5,000 for the journey, it isn't exactly sportsmanlike, not with all the unemployment around here nor with all the city and country boys who have to cough up the annual tribute and who, at this minute, could use any part of five thousand.

This rising tide of resentment has not failed to alarm the mayor, and in an effort to check it he has laid himself open to further criticism and ridicule. James Burkitt, self-styled "Jeffersonian Democrat" who has been waging an independent campaign against the machine, has been bombarded on several occasions by rotten eggs when he attempted to speak on the expense of local government. The police made no attempt to intervene, and it has been rumored that one of the attacks was led by an ex-convict from the Rahway Reformatory and that it was made with the full knowledge of the machine. "Jeff's" latest act has been the organization of the "Non-Partisan Rentpayers' and Taxpayer's League of Jersey City." Aside from the efforts of the "Jeffersonian Democrats," a serious movement is being promoted by a group of disinterested citizens to defeat the machine at the next municipal election in May, 1929, when a new city commission is to be chosen.

We have traced the political career of Frank Hague from the "Horseshoe" to the city hall. From his position as boss of the second ward he has risen to greater heights of power than Bob Davis or any of his other predecessors who have dominated the Democratic organization of Hudson County. But unlike them Hague is a mayor-boss. The present question is whether a mayor-boss has a better chance for survival in practical politics than any other kind of a boss. From the facts that have been presented in this article it seems safe to predict that political history is about to repeat itself in Jersey City and that Frank Hague, the city's mayor-boss, is headed for a fall.

THE TAX SITUATION IN CHICAGO[1]

BY HERBERT D. SIMPSON, PH.D.

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A graphic description of a scientific attempt to unravel the inequalities of Chicago assessments, which formerly deviated from uniformity on an average of 40 per cent. :: :: :: :: :: :: ::

WHEN the Illinois legislature met in special session on June 18 and in five days passed two important bills with reference to the tax situation in Chicago, it occasioned some astonishment, even to those fairly familiar with the situation in that city. And when the State Tax Commission a month later, under the authorization of one of these statutes, issued an order requiring a complete reassessment of real estate in Chicago and Cook County, it precipitated a situation of extreme concern to taxpayers in Chicago and of some interest to students of municipal taxation in general. It will be the purpose of this paper to present a brief account of the events that led up to the action of the legislature and State Tax Commission, and particularly of the facts upon which this action was to a large extent based.

COMPLEXITY OF THE PROBLEM

In fairness to the taxing authorities, it may be said at the outset that the problems of financing a city like Chicago are extremely complex and have been made more so by the rapid growth of the city during the past decade. Chicago now embraces an area of 209 square miles and a population of over 3,000,000 people. This is more people than are scattered today all over the broad areas of Montana, Idaho, Wyoming, Utah, Nevada, New Mexico and Arizona combined — two tiers of western States and a sweep of territory that stretches from Canada to Mexico. The population of Chicago, in short, is greater than that presided over by seven governors and seven state legislatures elsewhere, and represented by fourteen senators at Washington. These three millions of people are, generally speaking, in comfortable circumstances, being possessed of some twelve to fifteen billions of wealth, which again is sufficient to duplicate that of the seven states enumerated above and still leave enough to buy up the United States Steel Corporation and the state of Delaware.

PUBLIC EXPENDITURES IN CHICAGO

In consequence of its rapid growth in population and wealth, the city of Chicago is spending in governmental activities around $260,000,000 a year, which is as much as the entire federal government was spending forty years ago. In the expenditure of these funds a variety of governmental bodies participate, including, besides the state legislature and the Cook County board of commissioners, the city council, the board of education, the sanitary district, the forest preserve district, certain "townships" within the city which still retain the power to levy taxes, sixteen park boards, and certain other special bodies, which bring the total to more than a score of different legislative bodies that levy taxes on

[1] The discussion of this subject will be continued by the same author in our next issue.

property in Chicago—not to mention some four hundred other taxing bodies in the county, whose expenditures affect, directly or indirectly, property holders in Chicago.

It will thus be seen that the expenditure of public money in Chicago is not only a large business but a very heterogeneous one, carried on by a surprising variety of agencies, with a confusing division of responsibility, and with apparently no coördination among spending bodies or purposes of expenditure. Any private business of comparable size that would attempt to conduct its financial affairs through such an organization would certainly go bankrupt; and the only reason the city of Chicago has not gone into receivership is that its citizens have managed their private business better than their public and have accumulated sufficient surpluses in the one account to offset deficits in the other. In short, wealth has increased so rapidly during the past decade that, in spite of wasteful and extravagant expenditures, the government has remained solvent.

SYSTEM OF ASSESSMENT

Of all taxes collected to provide for these expenditures, the general property tax still constitutes more than 90 per cent. The system of assessment on which these property taxes are based consists briefly of the following elements:

1. A county board of assessors, composed of five members, elected for terms of six years, which assesses real estate and personal property in Chicago and has general supervision over assessments throughout the remainder of the county.

2. Township assessors, for townships of the county outside of Chicago, elected by each township, who make the original assessments in these townships but are legally under the supervision of the county board of assessors.

3. A county board of review, composed of three members, elected for six-year terms, which reviews and equalizes the assessments made by the board of assessors and by the local township assessors outside of Chicago.

4. The state tax commission, composed of five members, appointed by the governor of the state, which has broad general powers of supervision over local assessors and boards of review but has hitherto made negligible use of these powers.

The state has a uniformity requirement in its constitution and, in the case of real estate, a quadrennial system of assessment.

This general system of taxation and assessment has come down, in varying portions, from constitutional and legislative enactments of 1898 and 1848, portions of it, in fact, from 1818, when Fort Dearborn still guarded the lake shore against British invasion and when Wacker Drive was nothing but a muskrat track through the weeds along the Chicago River. By the time any system of taxation has been in operation for a century more or less, it would seem to be appropriate to undertake some accurate appraisal of its results; and this the writer, in conjunction with the staff of the Institute for Research in Land Economics, attempted to do for Chicago in the summer of 1926.

SURVEY OF RESULTS

In January, 1927, the board of commissioners of Cook County, in which Chicago is situated, created a Joint Commission on Real Estate Valuation, composed of government officials and representatives of business and civic organizations, with George O. Fairweather, business manager of the University of Chicago, as chairman. This commission, finding our study of assessments in Chicago already under

way, undertook to finance the work in order to make possible a much larger and more comprehensive survey. The results of this survey are summarized in the following pages.

The first objective was to ascertain the actual results of the present system of taxation, as reflected in the assessment of property, and to do this in such a way as to demonstrate the facts, whatever they might prove to be, beyond doubt or question. For this purpose the study was concentrated for the time being upon real estate assessment, and a comparison made of assessed valuations and actual sales values.

In order to test fairly the working of the quadrennial feature itself, a period was selected exactly in the middle of the past quadrennium, which proved to be from November 1, 1924 to July 1, 1925. All real estate transfers in Chicago during this period—more than 7,000 in all—were analyzed. After eliminations for incomplete or erroneous data, foreclosures, trades, transfers between members of a family, and transfers which represented only parts of a larger transaction—wherever these facts could be ascertained—the number of transfers came down to 6,445, and on these transfers the results are based.

A number of variations from the usual methods of comparing sales values and assessments were devised for special application to conditions in Chicago, and a large amount of collateral information about real estate values, methods of financing real estate purchases, and the cost of such financing was secured. Space will prevent discussion of these matters here; but, in brief, it may be said that in the determination of actual sales values, the revenue stamps required at that time were used as initial clues, supplemented by correspondence and interviews with buyers, sellers, and dealers, by reference to the Sanborne insurance maps and the records of building permits for checks upon the improvements at the time of transfer and of assessment, and by physical inspection of a large number of properties. In consequence of these various eliminations, checks, and corrections, it is believed that the sales data herein presented represent as high a degree of accuracy as it is practically possible to attain and one that will make them thoroughly representative of the period covered.

After ascertaining the sales values of properties, the assessments standing against these properties were traced in detail from the quadrennial reassessment of 1923 through the 1927 quadrennial assessment, with a record of all changes made in the intervening years, either by the board of assessors or by the board of review. This affords a complete five-year record of assessments in Chicago.

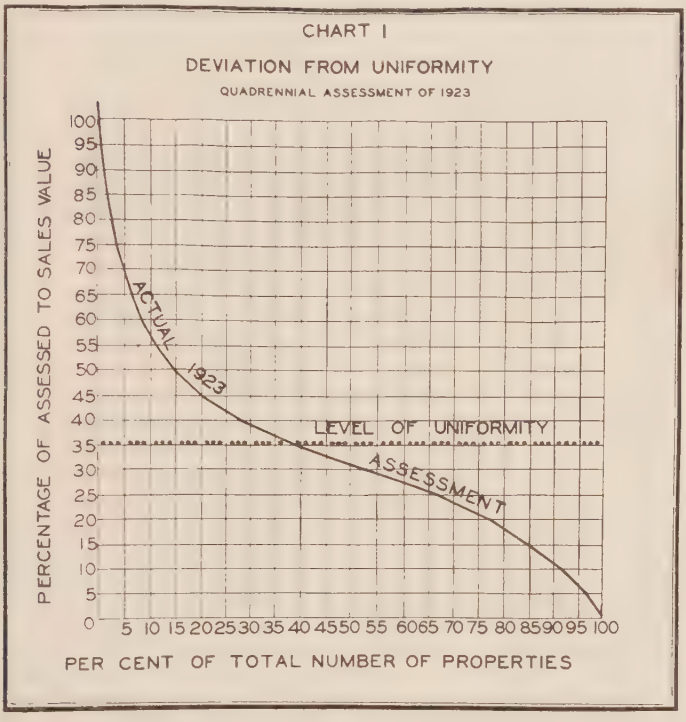
THE FACTS

Out of some seventy-five tabulations and more than a hundred charts, only a half-dozen typical charts can be shown here. These will have reference chiefly to the assessments of 1926 and 1927, the former representing conditions at the end of one quadrennium, after four years of equalization by the board of review, the latter representing the new quadrennial assessment.

THE ASSESSMENT OF 1923

In order to get a perspective on the situation, we will begin with the quadrennial assessment of 1923, as made by the board of assessors, illustrated in Chart 1. In this and the following charts, vertical distances represent the percentage of assessed to sales value; the base line represents the total number of properties, in the form of percentage from 0 to 100 per cent. The curve is technically a "more than"

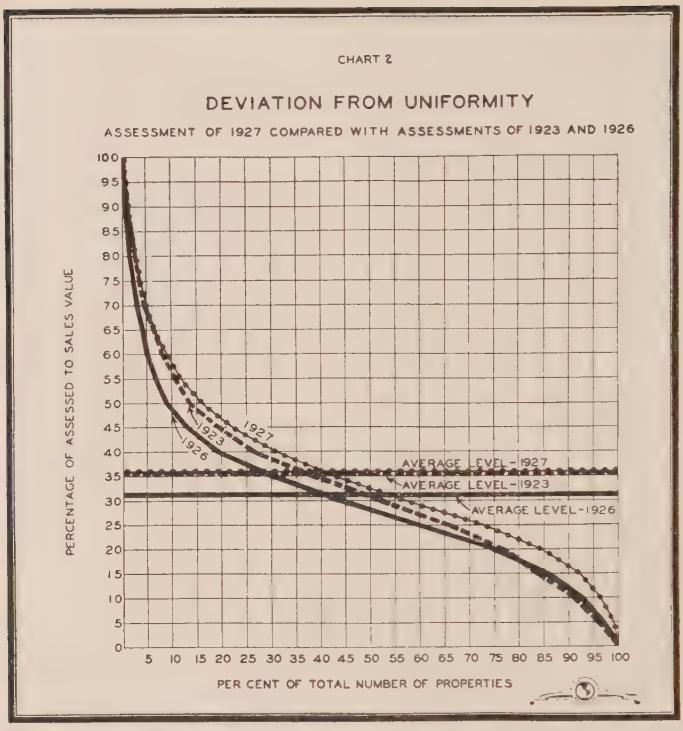
curve, indicating, for example, that approximately 4 per cent of all properties are assessed at over 70 per cent of their value, 8 per cent of properties at over 60 per cent, and so forth. Its "more than" aspect is less important, however, than the fact that it has proved effective before popular audiences, as a simple device for illustrating the difference between a uniform assessment and the actual assessment. For this purpose, the curve is thought of as representing simply the assessment of the individual properties, in terms of sales value, and arranged in order from highest to lowest.



The dotted horizontal line indicates the average rate of assessment[1] of all properties in 1923, namely, 35.4 per cent. We are designating this the "level of uniformity" for that year, because this is the rate of assessment (and this is the *only rate*), at which all properties could have been assessed uniformly and still have yielded exactly the same aggregate assessment and revenue. If all properties had been assessed uniformly at this level, the assessment of 1923 would have been represented by the straight horizontal line across the chart. How far the actual assessment fell short of uniformity is indicated by the curve, showing assessments ranging from a fraction of 1 per cent of true value to over 100 per cent.

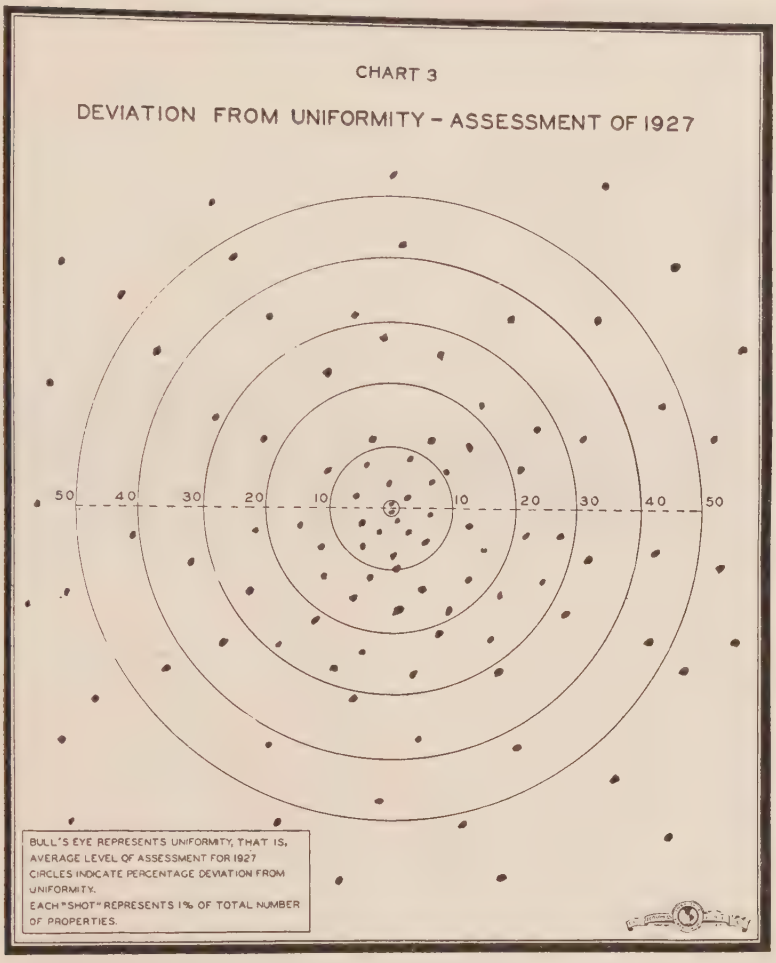
But it is possible to apply more precise measurements to the quality of assessment than merely this range and general distribution. If a horizontal line at any level (in this case, at a

[1] Prior to 1927, the statutes required the assessment of property, for purposes of taxation, at 50 per cent of its full value. Throughout the present paper, however, all figures have been converted into full value equivalent.



level of 35.4 per cent) represents 100 per cent of equality, the degree of equality attained by an assessment may be measured by the deviation of the actual curve from the horizontal line. *The curve for 1923 has an average percentage deviation of 40 from the level of uniformity.*

Just what a deviation of 40 per cent means depends on what one has in mind. In astronomy a deviation of one or two per cent in the motions of some of the heavenly bodies would upset the equilibrium of the solar system; in matters of ordinary human conduct, on the other hand, we get along with much wider deviations from rectitude. But if one will think for a moment what an average error of 40 per cent would be in accounting; what 40 per cent off specifications would mean in machinery and construction; or how 40 per cent off size would look in hats, collars, shoes, and ordinary articles of wear, he will comprehend readily what an assessment with an average deviation of 40 per cent from uniformity means. If one's proper size is 7½ in hats, 15 in collars, 8 in shoes, and a trouser length of 32, an average deviation of 40 per cent would fit him out in either a No. 10½ hat hanging around his ears, or a No. 4½ sitting on the peak of his head; a No. 21 collar resting on his shoulders, or a No. 9 collar strangling his Adam's apple; a pugnacious No. 11 on one foot and a dainty No. 5 on the other; a 19-inch trouser creeping up one leg and a 13-inch train of empty trouser leg dangling from the other. Yet the people of Chicago would be better off today parading down Michigan Boulevard in this deviated garb than parading back and forth to the county building and paying taxes on property *that is on the*



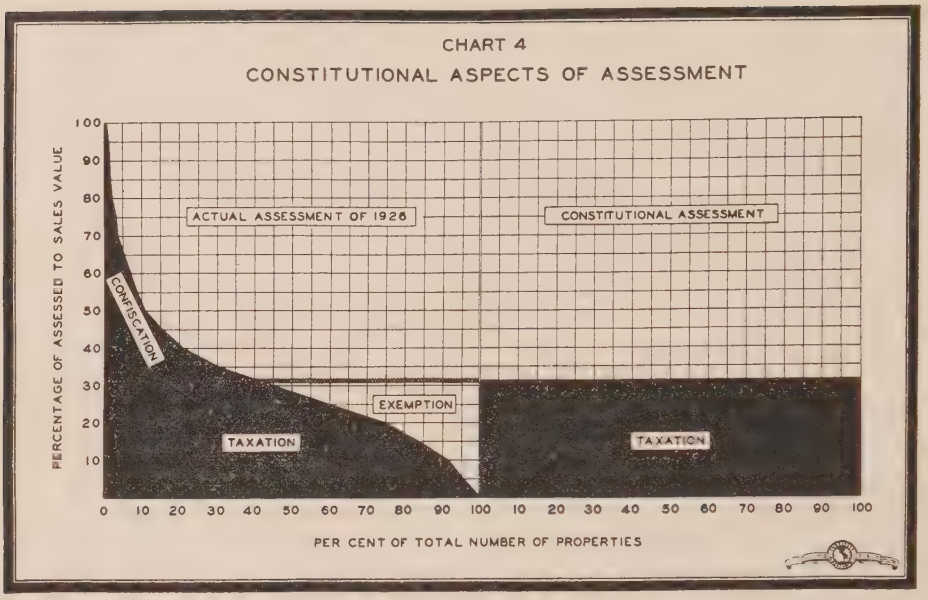
average either 40 per cent over-assessed or 40 per cent under-assessed!

THE ASSESSMENTS OF 1926 AND 1927

In Chart 2 the curve for 1923 is carried forward and compared with the assessments of 1926 and 1927.

The curve for 1926 represents the assessment standing at the end of the quadrennium, after four years of equalization by the board of review. The average level has dropped from 35.4 to 31.3; but it requires mathematical measurement to determine whether the assessment, as fixed by the board of review at the end of the quadrennium, is any more nearly uniform than that made by the board of assessors at the beginning. Measured in this way, its percentage deviation from uniformity has been reduced during the four years from 40 to 37.7.

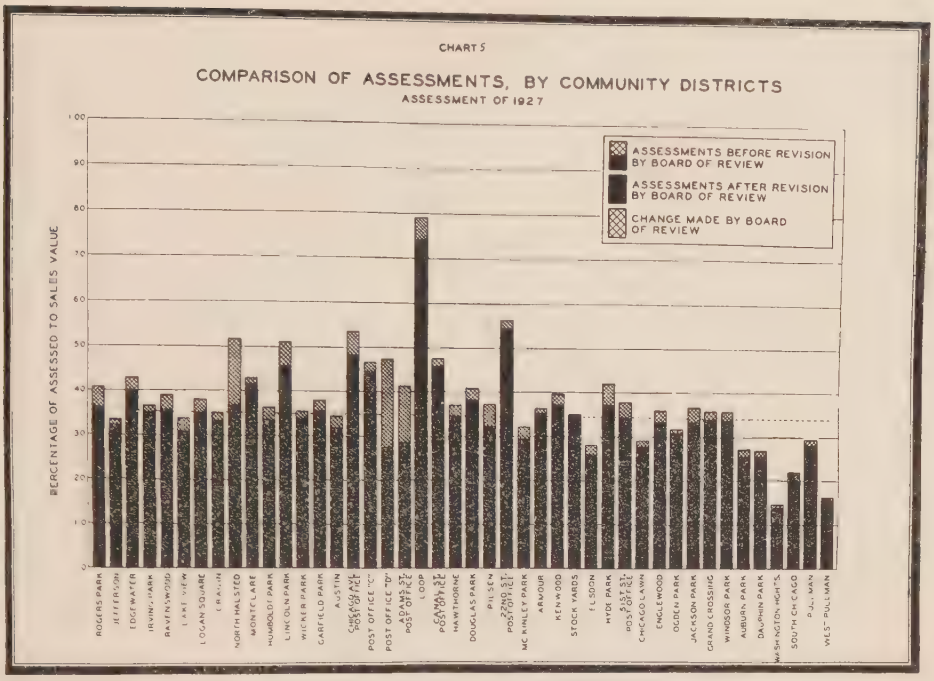
The new quadrennial assessment of 1927 contains food for thought. In view of the general protest it has aroused, one would suppose there had been a violent increase in assessments. The actual increase over the last quadrennial assessment is scarcely detectible (an increase of 1.4 per cent); and even



the increase from the reduced assessment of 1926 is only 14.7 per cent. Taxpayers were prepared for some increase in the assessment of 1927, on account of the general increase in property values since 1923, if for no other reason; and if that increase had been distributed with any semblance of equality, the majority of property holders would merely have breathed a sigh of relief that the increase was less than most of them had anticipated. In concrete form, the *average* result over the entire five-year period was merely that a property which, in 1923, was assessed at $35,400, was assessed at $31,300 in 1926, and at $35,900 in 1927; not something to become greatly excited about. But the extreme inequalities of the reassessment, in conjunction with circumstances to be described later, brought forth a storm of protest.

Chart 3 is self-explanatory, but we may relate the parable. The bull's-eye is equality. The concentric circles measure percentage deviation from equality, the bullet marks above the dotted horizontal lines representing over-assessment and those below the line under-assessment. Each rifle shot represents 1 per cent of the total number of properties. The rifle company is the Cook County board of review—and the target tells the story, with one qualification. The shots outside of the outer circle are not located to scale, for the simple reason that if they were, many of them would have missed this page entirely.

If one is inclined to smile at the target, he will not smile at Chart 4. Here the right half indicates how the assessment of 1926 would have looked, if all properties had been assessed equally at the actual average rate for that year, namely, 31 per cent. The left half represents the assessment as it *was* made. The curve differs from those on previous charts in the fact that here it represents *value* not *individual properties*, indicating, for example, that approximately 10 per cent of the *total value* of real estate in Chicago is assessed at 55 per cent or



over, that another 10 per cent of total value is assessed at 42 to 55 per cent, and so forth. This makes it possible to represent aggregate values and assessments in the form of definite areas, drawn to scale on the chart. The quadrangle on the right and the triangle on the left are exactly equal in area and represent an exactly equal amount in dollars and cents.

A FORM OF CONFISCATION

And if the distribution of assessments in terms of value enables us to visualize certain relationships in the form of definite areas, the constitution of Illinois makes it possible to designate these areas with equal precision. That portion of taxes which is collected from property assessed with some approach to uniformity is *taxation* in a constitutional sense. In a state having a uniformity requirement, that portion of taxes which is collected from a stratum of over-assessed property is not taxation but *confiscation*. In Chicago, this amounts to slightly over $30,000,000, in cold dollars and cents, collected from citizens every year by a process which, if the constitution is anything more than a scrap of paper, is outright confiscation.

And it is a particularly vicious form of confiscation, since the taxes collected in this way do not go to increase the revenue of the government, but merely to replace payments that should have been made by other property holders. On the chart, the area from which this $30,000,000 of taxes should have come is designated "Exemption," and is exactly equal to the area labeled "Confiscation." The result, therefore, is precisely the same thing as taking $30,000,000 from one group of citizens and distributing it gratuitously among another group. This, at its best, is a poor type of socialism, and at its worst is organized crime. Which of the two is represented by the present assess-

ment administration in Chicago, we are not in a position to say; but a further analysis of the facts will afford some materials for judgment.

TERRITORIAL DISTRIBUTION OF INEQUALITIES

After measuring the general range and distribution of assessments, an attempt was next made to learn how these inequalities were distributed territorially throughout the city. For this purpose, the city was divided into fifty community districts. These are not wards or political subdivisions but are popularly known as neighborhood districts, which Chicago people will have no difficulty in recognizing. The average rate of assessment within each district was computed, and the result is shown in Chart 5, with the exception of districts for which less than twelve transfers were available, and for which it was felt, therefore, that an average might not be sufficiently representative.

In Chart 5, the districts are arranged as nearly as possible in geographical order, from north to south. The reader will not miss the general resemblance to the city's sky line itself.

But perhaps the most significant thing in the chart is the light it throws upon the work of the board of review. The entire height of the bars represents the initial assessment, as made by the board of assessors; the solid portions, the final assessment after equalization by the board of review. The cross-hatched sections, therefore, measure accurately the result, in each district, of changes deliberately made by the board of review. If anyone can discover here a semblance to any process of equalization, it is beyond the range of mathematics or statistics.

The result is the assessment map of Chicago shown below. A great deal has been said in recent years about tax maps issued for the convenience and information of property holders, such as those issued in Detroit, Minneapolis, and other cities. The map herewith is offered as a contribution to tax geography.

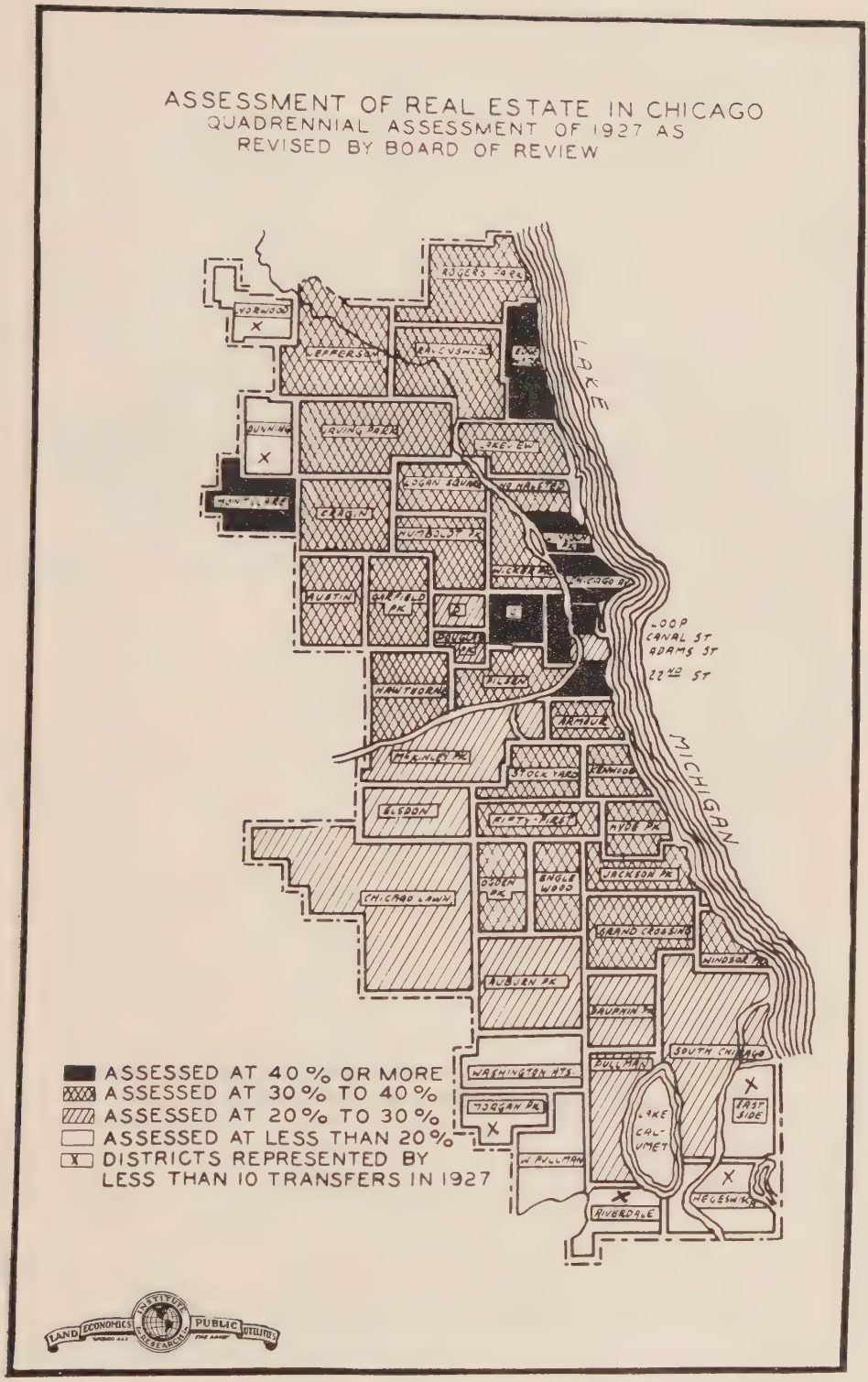
It will be noted that, in contrast with the situation in many other cities, the areas of heaviest assessment are concentrated in the down-town sections, the areas of lighter assessment ranging throughout the outlying portions of the city.

In other words, if the various levels of assessment in Chicago were represented by a relief map, we should have the down-town business section situated upon a distinct peak, surrounded by a broad and irregular plateau of considerable altitude; this plateau falling away to irregular foothills in the northern and western portions of the city, and dropping abruptly to a plain or marsh in the vicinity of Lake Calumet. One of the incidental features of such a map would be a conspicuous depression in the very heart of the plateau, in the neighborhood of the Adams Street post office, for which local gossip affords various explanations.

INEQUALITIES AMONG CLASSES OF PROPERTY

After tracing the territorial distribution of inequalities, all properties were classified under ten general types, in order to determine whether the assessment tended to favor or penalize any particular classes of property. The assessment for 1926 has been selected, because the results of four years of equalization must presumably represent more or less deliberate policy. These results are shown in Chart 6.

The chart appears to confirm the implication of the map above that, in general, business property is assessed at higher rates than residential, vacant,


ASSESSMENT OF REAL ESTATE IN CHICAGO
QUADRENNIAL ASSESSMENT OF 1927 AS
REVISED BY BOARD OF REVIEW
LAKE
MICHIGAN
LOOP
CANAL ST
ADAMS ST
22ND ST
ASSESSED AT 40% OR MORE
ASSESSED AT 30% TO 40%
ASSESSED AT 20% TO 30%
ASSESSED AT LESS THAN 20%
DISTRICTS REPRESENTED BY
LESS THAN 10 TRANSFERS IN 1927
LAND ECONOMICS
PUBLIC UTILITIES

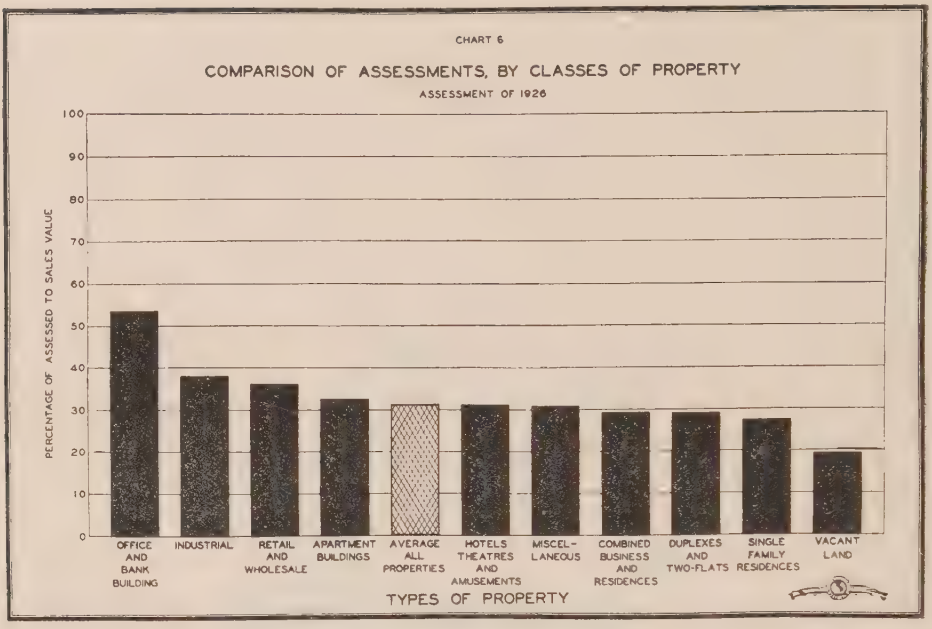


CHART 6
COMPARISON OF ASSESSMENTS, BY CLASSES OF PROPERTY
ASSESSMENT OF 1926
PERCENTAGE OF ASSESSED TO SALES VALUE
100
90
80
70
60
50
40
30
20
10
0
OFFICE AND BANK BUILDING
INDUSTRIAL
RETAIL AND WHOLESALE
APARTMENT BUILDINGS
AVERAGE ALL PROPERTIES
HOTELS THEATRES AND AMUSEMENTS
MISCELLANEOUS
COMBINED BUSINESS AND RESIDENCES
DUPLEXES AND TWO-FLATS
SINGLE FAMILY RESIDENCES
VACANT LAND
TYPES OF PROPERTY

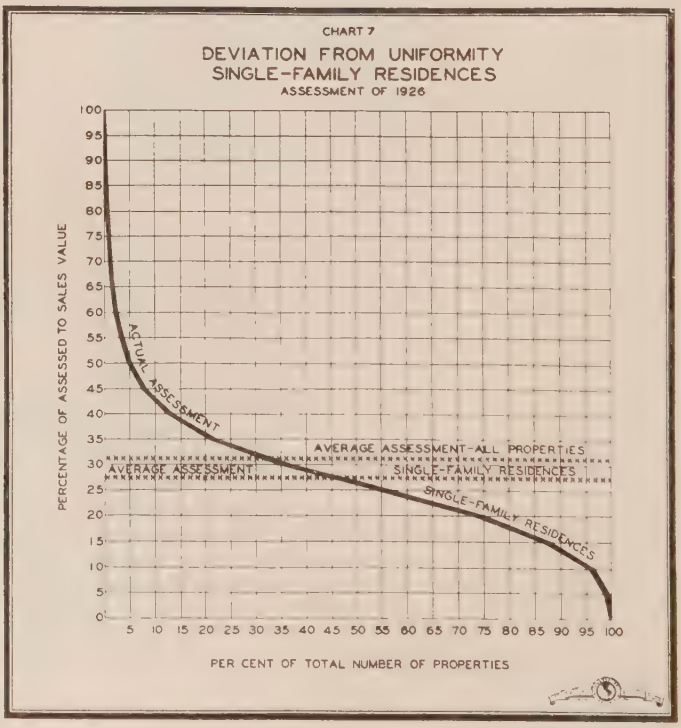


CHART 7
DEVIATION FROM UNIFORMITY
SINGLE-FAMILY RESIDENCES
ASSESSMENT OF 1926
PERCENTAGE OF ASSESSED TO SALES VALUE
100
95
90
85
80
75
70
65
60
55
50
45
40
35
30
25
20
15
10
5
0
ACTUAL ASSESSMENT
AVERAGE ASSESSMENT-ALL PROPERTIES
AVERAGE ASSESSMENT SINGLE-FAMILY RESIDENCES
SINGLE-FAMILY RESIDENCES
5 10 15 20 25 30 35 40 45 50 55 60 65 70 75 80 85 90 95 100
PER CENT OF TOTAL NUMBER OF PROPERTIES

or other classes of property. Vacant land is assessed at 19.7 per cent; all improved property shows an average assessment of 32.4 per cent.

On the chart, the differences in height of this series of bars may perhaps not appear striking; but in terms of dollars and cents to the taxpayer they mean such things as the following. The tax rate in Chicago averages approximately 5 per cent on assessed valuation. This means that the owner of a vacant lot in Chicago in 1927 paid (on the 1926 assessment) a rate of around ten mills on the true value of his property. If he built a home on his lot, his tax rate went up to fourteen mills. If he put up an apartment building, providing homes for a large number of people, his tax rate went still higher, to sixteen mills. If he put up a large office building, representing probably the maximum utilization of the land, his rate went up to 26.7 mills. This is exactly the opposite of the single tax, if that affords consolation to anyone.

Single-family residences are assessed at an average rate of 27.7 per cent. If this lower assessment indicated a concession to home-owners as a class, in the interest of promoting home-ownership, something could be said in its favor, even though it does violate the constitution and statutes and ignores the fact that dwellers in flats and apartments must, on the whole, represent a poorer economic class than home-owners, in a city like Chicago, and are therefore entitled to at least as low a tax rate. In order to determine whether it was the policy of the assessing bodies to favor home-owners as a class, the individual assessments of the 1,327 homes included among our properties were traced, with the surprising results indicated in Chart 7.

Twenty per cent of these homes are assessed at rates ranging from 40 to 100 per cent of value, in an assessment which has a general average of only 31 per cent. On another 20 per cent of homes, assessments range from 23 per cent down to 5 per cent of actual value. Among home-owners themselves, therefore, there appears to be as great a degree of discrimination as exists elsewhere.

RECENT BOOKS REVIEWED

A Uniform Classification of Major Offenses. By the Committee on Uniform Crime Records of the International Association of Chiefs of Police. Published by the Committee, 261 Broadway, New York City, 1928. Pp. 55.

Any one who undertook to tabulate statistics of crime for the United States as a whole would find himself very much in the position of the person who set out to discover how many people take sugar in their coffee for breakfast. Various methods were open to him. He could choose a small area and, by going from house to house, ask people. He could consult the sugar manufacturers. He could ask the local grocer. When he was through, he would know very little.

So, with respect to crime. We have few valuable criminal statistics for the country as a whole. It *is* possible to know how many people actually enter prisons each year, but this is very different from the number of persons arrested, the number of complaints made to police departments, and the number of crimes committed. It is different, also, from the number of people tried and the number found guilty—many are merely fined or placed on probation. In other words, we do not know the volume of crime, the cost of crime, the drift of crime, and various other things about crime.

If it were possible for every police jurisdiction to report complaints and arrests to a central authority, and to use uniform crime classifications or schedules for this purpose, we should be in a much stronger position in the matter of criminal statistics than we are now.

We should not be at the mercy of every journalist's warm paragraph about a "crime wave," or wondering whether Chicago is three times as bad as New York—or only twice as bad.

Such is the object of the classifications printed in this booklet. The method of the committee has been to examine the penal statutes of thirty states. It has then prepared, for each of these, a schedule which, when filled out in accordance with local law and practice, will enable any police department to make a return to a central agency, and this return can *then be used with similar returns from other jurisdictions for the tabulation of comparable, nation-wide statistics.* The committee is to be congratulated on having taken so novel—and somewhat laborious—a step. If such schedules should come to be universally used, it would be fine; and there is no reason why, in the course of time, they should not be. The committee has justified the faith reposed in it.

At present, these schedules are limited to thirty states and to four major offenses— felonious homicide, rape, robbery and burglary. It is planned to extend them to other states and to other crimes. Meanwhile, the committee wants criticism; these schedules it regards as tentative. The tasks ahead of it include persuading people that such schedules are desirable, and overcoming the inertia of police departments. But all will come. Some day the United States will not have to say to Europe: "How interesting that you have statistics of crime! We have none!"

Winthrop D. Lane.

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A Syllabus in American National Government; a Syllabus in American State Government; a Syllabus in American Municipal Government. By Russell H. Ewing. New York: The General Press, 145 East 32nd St., 1928.

The author has prepared mimeographed outlines for the three basic courses in American government. The outline in national government is based primarily on Charles A. Beard's *American Government and Politics;* in the field of state government John M. Mathews' *American State Government* furnished the basis; for municipal government, Thomas H. Reed's *Municipal Government in the United States* was used. In each instance many other sources were employed, including all the major texts in the fields. The syllabi could probably be used in connection with any text, though their greatest usefulness would be with those which furnish the primary source. In each syllabus, the chapter headings follow the chapters in the respective text.

Each chapter outlines the material on the subject with which it deals. The student is thus furnished with a guide to the material in the texts. At the end of each chapter are a series of suggestive questions dealing with the material involved. These have been carefully chosen

with a view to directness and economy of time of both student and teacher.

These are unquestionably usable syllabi. They are clear, inclusive and to the point.

HARRY A. BARTH.

University of Oklahoma.

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STATE GOVERNMENT. By Frank G. Bates and Oliver P. Field. New York: Harper and Brothers, 1928. Pp. xii, 584.

According to the prefatory statement of the authors, this book has been written "to serve as a textbook in a survey course in state government offered to undergraduates in colleges and universities." In the selection and treatment of the material which is incorporated in the book, the authors have been governed by "the experience gained in the classroom through several years' teaching of the subject." Although no radical departures from the traditional methods of presentation have been attempted, there are several variations "both in topical arrangement and in emphasis from the models set by previous writers in this field." The most notable of these departures are in the treatment of the relations subsisting and developing between the federal government and the states, of the relations between the states themselves, and of the origin, content and significance of the constitutions of the states. Moreover, a rather unusual, but not excessive, amount of space is devoted to the treatment of the legislative functions and powers and to the subject of finance. Very few footnotes are used, and the bibliographies which appear at the conclusion of the respective chapters list only the more outstanding general treatises on the subject under consideration. There is an appendix of eighty-nine pages containing the constitution of Vermont of 1771, the constitution of Indiana of 1851, the constitution of Arizona of 1910, and the constitution of the United States, selected to illustrate the developing types of constitutions. The volume is equipped with a brief but adequate and usable index, and the development of each chapter is neatly shown by appropriate marginal entries.

In general, the authors have wisely chosen to treat government and governmental agencies as active and developing rather than as passive, fixed and final processes. In addition to an introductory chapter on the nature, purposes and types of government, the nature of political relations and the development of a terminology, the main part of the treatise is concerned with a description and discussion of federal and state relations, inter-state relations, constitutions, parties, suffrage and elections, the legislature, finance, the governor, the administrative system and services, the judiciary, the law and its application, and local governments other than those of cities.

Any person who is at all familiar with the complex structure of the government of any modern state must realize the inherent and insuperable difficulties of preparing a treatise of this kind. If a complete description of the various governmental agencies were attempted, the treatise would assume unmanageable and encyclopedic proportions, and if a general description only is presented, the author would become involved in the risk of producing a work which would be not only unsatisfactory but which might be entirely incomprehensible. The authors of this book seem to have encountered this dilemma with as great a degree of success as any writer can reasonably hope to attain. A narrative of facts sufficiently comprehensive to constitute an adequate and tangible survey of the field of state government is set forth and the discussion which accompanies the narrative is at all times pertinent, illuminating and provocative. The style is dignified, expressive and lively; and the criticisms advanced for and against existing governmental agencies and institutions are of such a character as to stimulate and assure clarity of thought without producing rancor.

The book as a whole must be regarded as a first-class piece of work, the material for which has been well selected, well organized and proportioned, set forth in a pleasing and readable style, and it constitutes a scholarly and authoritative treatise on state government acceptable alike to college students and to general readers.

CHARLES KETTLEBOROUGH.

Indiana Legislative Bureau.

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THE NATIONAL INSTITUTE OF PUBLIC ADMINISTRATION: AN EXPERIMENT IN DEMOCRACY. By Luther Gulick. Published by the Institute, 261 Broadway, New York City, 1928. Pp. 106.

In the great changes which have occurred in American government during the first quarter of the twentieth century, no single factor has had a greater influence than that unique American movement known as governmental research.

Created originally as a local institution, the New York Bureau of Municipal Research has established an example of method for the solution of governmental problems which, as gradually applied to other sections of the country, has resulted in new standards of technique, based upon exact information of comparative experience, and a new conception of governmental problems. The significance of this development and the important leadership continuously exercised by the original New York group has not been widely recognized. There is now available, however, an interesting account of this great influence in American democracy told by one who has observed its growth from the beginning, and who has had an important part in directing its accomplishments.

The National Institute of Public Administration, by Luther Gulick, is timely, and deserves a wide circulation. Although it contains an accurate detailed account of great value to the public official and student, there is ever present an underlying philosophy, and a well-told narrative which should appeal to the average citizen who would spend an enjoyable hour in obtaining a better understanding of our democratic institution. Mr. Gulick has written a splendid book on a splendid subject.

SAMUEL C. MAY.

University of California.

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NOMINATING METHODS, WITH SPECIAL REFERENCE TO THE DIRECT PRIMARY. By Helen M. Rocca, Department of Efficiency in Government, National League of Women Voters. Washington, D. C., 1927. Pp. 60.

A SUPPLEMENT TO NOMINATING METHODS. By Helen M. Rocca, Department of Efficiency in Government, National League of Women Voters. Washington, D. C., 1928. Pp. 20.

A BRIEF DIGEST OF LAWS RELATING TO ABSENTEE VOTING AND REGISTRATION. By Helen M. Rocca, Department of Efficiency in Government, National League of Women Voters. Washington, D. C., 1928. Pp. 98.

These are useful pamphlets and represent a commendable activity of the National League of Women Voters. The first contains a brief history of nominating methods in the United States and an excellent summary of the leading features of the direct primary laws in the several states. This summary is arranged under the significant headings into which primary legislation may be divided, such as parties entitled to nominate by a direct primary, who may be candidates, how candidates qualify for a position on the primary ballot, open and closed primaries, tests of party affiliation in the closed primary states, etc. The requirements of the laws of the different states are grouped under these headings. The material is clearly and succinctly presented in very readable form. Fourteen pages are then devoted to an examination of the important charges against the direct primary and answers to the charges are given. Possible future developments in nominations are briefly discussed. The dates of the direct primary elections and presidential primaries are listed in a table. References to general and special writings upon the primary conclude the pamphlet. The statements are accurate and the discussion fair and enlightening. It is a high-class piece of work, creditable to the author and to the League.

The *Supplement* contains the amendments of primary laws enacted by the legislatures of the states during the 1927 sessions.

The third pamphlet treats the absent voting legislation of the different states in ample detail, and maintains the high standard of accuracy and clearness which characterizes the other two. Equally satisfactory summaries of the state laws upon other subjects would doubtless be welcome in many quarters.

RALPH S. BOOTS.

University of Pittsburgh.

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Three City Reports.—*Oberlin, Ohio, Annual Report for the Year 1927. By D. F. Herrick, Village Manager. Pp. 30.*—This report is a good example of how the activities of a small city can be reported in a clear, brief, and simple manner. The material is divided into nine parts. This is clearly stated in the front of the report and is adhered to as the following subjects are dealt with in turn: finance; streets, roads, parks, and bridges; sewers and sewage plant; public dumping ground; fire; police; water works; improvements needed; and comparisons and conclusions. A few clear tables on current finances, bond statement, and a sinking fund investment record occupy the last eight pages. The report was distributed within thirty days after the end of the period covered. May this be emulated by other cities! Of the twenty criteria upon which the reviewer attempts to grade reports coming to his attention, this report

reaches the perfect score on nine, viz.: promptness, size, paper and type, organization chart, letter of transmittal, length, balanced content, comparative data, and absence of propaganda.

The weak points are a lack of emphasis upon important facts, inadequate use of illustrative material, and no table of contents. Other small cities might well copy the technique developed herein with the few exceptions noted.

Fort Worth, Texas. Annual Report for the Year Ending September 30, 1927. By O. E. Carr, City Manager. Pp. 32.—Mr. Carr is using the rather unique title *The Progress of Fort Worth* for his annual reports. This he does perhaps to avoid the odium of the usual title, "annual report." The reviewer is inclined to believe that a municipal report should be called such, and the contents be made sufficiently attractive and useful that readers will pay less attention to titles and more to the content.

This report either equals or surpasses the previous reports of Fort Worth on practically all twenty criteria except promptness and balanced content. The report was two months later than the 1926 issue, and the content does not indicate so good a balance of activities. Of over twenty-five "high lights of civic progress" enumerated, fully four-fifths deal with public works activities. This is not an unusual occurrence in report writing, and it is probably done in the belief that people are more interested in physical improvements than in other activities of their government. This may be a sound assumption; but a continuation of such policy will not help the cause of good reporting nor aid in creating a popular demand for more intelligent appraisal of the various services. The notable improvements over the previous report are the use of a larger number of charts and more comparative data. An especially good feature of the Fort Worth reports, which is not a common practice, is the placing of names of department heads with the report of their respective departments and the names of members of the council, boards, and commissions in the front of the report. Inasmuch as the members of library boards, city planning commissions, and the like, seldom receive any other reward for their faithful service, it would seem that such a recognition is justifiable.

The absence of an organization chart robs the reader of a reliable guide and the reason for omitting a letter of transmittal is difficult to understand, even though the report covers activities not immediately under the supervision of the city manager. The city manager is, theoretically at least, the administrative head of the city government and the report is an accounting of the administrative services of the city. It would seem, therefore, that a letter of transmittal above his signature should introduce the report. Certainly it should not be issued anonymously.

Kenosha, Wisconsin. Sixth Annual Report, for the Year Ending December 31, 1927. By C. M. Osborn, City Manager. Pp. 55.—For many reasons this report is highly commendable. In the first place it starts out with a clear and simple chart of the organization with which the report deals. This feature furnishes at the outset a proper perspective of the governmental machine as a whole. In other words, the chart serves as a frame within which the reader visualizes a picture of action and accomplishment as he proceeds through the pages of the report. Other favorable features are the distribution of illustrative material throughout the report which is always kept within the relevant text, and a letter of transmittal followed by a page showing respectively, accomplishments during 1927, and proposed activities for 1928.

Eighteen of the twenty-one accomplishments and fifteen of the seventeen proposed activities pertain to physical improvements. The inclusion of a page of interesting facts about the city and a table of comparative statistics marking the progress of Kenosha during the past six years add greatly to the interest of the report without leaving so much as a hint of propagandizing. The fact that more than four months expired after the end of the period covered before the appearance of the report will detract from the interest and freshness of its contents; but such a delay, however, is the rule rather than the exception. A constant improvement in promptness, however, is apparent and soon report writers will fully appreciate the news value of prompt reporting.

C. E. Ridley.

JUDICIAL DECISIONS

EDITED BY C. W. TOOKE

Professor of Law, New York University

Home Rule—Municipal Ownership—Conflicting Decisions in Ohio.—In *Board of Education* v. *Columbus*, 160 N. E. 902, decided April 8 by the Supreme Court of Ohio, the court held that the state legislature may not limit the power of the city to acquire and operate public utilities for the benefit of its inhabitants and that a statute prohibiting it from making a charge for water furnished school buildings or other public buildings is unconstitutional and void. This decision apparently overrules an earlier decision of the same court (*East Cleveland* v. *Board of Education*, 112 Ohio St., 607, 148 N. E. 350). The Ohio Supreme Court, however, does not seem to accept such a conclusion, and in effect holds that the same statute may be adjudged constitutional in one district and unconstitutional in another, a most ridiculous position as the court itself confesses This result is reached, says Chief Justice Marshall in his opinion, by the application of the provision of the state constitution (Art. IV sec. 2) which provides that "no law shall be held to be unconstitutional and void by the Supreme Court without the concurrence of all but one of the judges, except in affirmance of a judgment of the court of appeals declaring a law unconstitutional and void."

In the East Cleveland case, the lower court upheld the statute, which decision under the constitutional provision was affirmed by the Supreme Court by a vote of two to five. The court of appeals in the Columbus district refused to follow the decision in the East Cleveland case, and the supreme court itself, evidently not appreciating the force of the constitutional provision, refused to apply the doctrine of *stare decisis* in upholding its own minority decision. The effect therefore is to hold the statute constitutional in the Columbus district, and absolutely uncertain in districts where no decision has been rendered. The members of the supreme court, having thus abrogated their own powers, are now appealing to the electorate to repeal the provision of the constitution, which they find so unworkable.

Zoning—Power to Enact Temporary Zoning Ordinance.—Outside of the recent decisions relating to procedure of zoning authorities and the rights of applicants for permits, which are especially numerous in New Jersey as the courts are endeavoring to work out the effect of the new constitutional amendment, perhaps the most important case which has been decided is that of *Fowler* v. *Obier, Building Inspector of Louisville et al.*, 7 S. W. (2d) 219, in which the Kentucky Court of Appeals affirmed the plenary power of first-class cities to enact comprehensive zoning ordinances.

The plaintiff sought a reversal of the decision of the board of public safety which had supported the building inspector in his refusal to grant a permit for the erection of a gas and oil service station in a block where less than twenty-five per cent of the abutting property was used for business purposes, which was the criterion of a residence district under the temporary ordinance. The legislature of Kentucky in 1922 had adopted a general enabling act, but, for reasons that do not appear, had repealed it in 1924. In 1927 the city of Louisville enacted an ordinance to create a city planning commission to make plans and surveys in order to enable the city council to zone the city. A supplementary ordinance was passed, prohibiting for two years the erection of any buildings for business or industrial purposes without the approval of the board of safety in a temporary residence district, and it was this ordinance that was attacked as beyond the power of the city to enact.

In deciding that the statute giving the general council of the city the "power to pass for the government of the city any ordinance not in conflict with the Constitution of the United States, the Constitution of Kentucky and the statutes thereof" conferred upon the city for local purposes all the unexercised police power of the state, the court held that the city had acted within the clear scope of its delegated authority. The temporary ordinance was adjudged reasonable and necessary to maintain the status quo pending the drafting and enactment of the

permanent zoning code. In so holding, the court follows the decision of the Supreme Court of California in *Miller* v. *Board of Public Works*, 195 Cal. 477, 234 Pac. 381, in which that court said:

"It is a matter of common knowledge that a zoning plan of the extent contemplated in the instant case cannot be made in a day; therefore we may take judicial notice of the fact that it will take much time to work out the details of such a plan and that obviously it would be destructive of the plan if, during the period of its incubation, parties seeking to evade the operation thereof should be permitted to enter upon a course of construction which might progress so far as to defeat in whole or in part the ultimate execution of the plan."

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Torts—Liability for Negligence in Care of School Property.—Two recent cases of interest involving the question of the recovery of damages by pupils injured through negligence in the care of school property have recently been decided by the courts of California and New York. While the general rule is that neither a city or a school district of itself is to be held liable in tort, upon the ground that the function discharged is purely governmental and that the subordinate body acts merely as an agency of the state in maintaining and managing the schools and the school property and therefore enjoys the immunity of the state from suits, liability may be imposed by statute. Such is the case in California, where counties, municipalities and school districts are alike made liable for injuries to persons and property resulting from the dangerous or defective condition of the buildings, grounds, etc., committed to their care, caused either by their active negligence or their failure to repair after reasonable notice. In *Huff* v. *Compton City Grammar School District*, 267 Pac. 918, the action was brought by a child of nine years, who was burned by contact with a trash incinerator maintained on the school playgrounds. The court, in affirming a judgment for the plaintiff, states, that the dangerous character of the situation was such as to demand its immediate remedy, a condition that was known to the officers of the district who had full power to abate it.

In *Lessin* v. *Board of Education of City of New York*, 161 N. E. 160, an eight-year-old boy fell into an elevator shaft near the sidewalk on the school grounds, the platform giving way when he ran upon it in playing a game of tag. Its defective condition was known to the employees of the board, who had taken no precaution to guard its approach. While no statute exists in New York imposing liability upon municipalities for negligence in the management of school property, the courts of the state in the well-known case of *Herman* v. *Board of Education* established the principle of liability upon the theory that the board was not only an agency of the state, but in reality an agent which should be held responsible, notwithstanding the immunity of its principal. This salutary principle was followed in the instant case, and the board which is charged with non-delegable corporate duties held liable to an individual injured through its failure properly to discharge them.

The extension of the doctrine of the Lessin case to the other governmental duties which the state imposes upon municipalities would largely wipe out the immunity from liability in tort now granted by the courts and firmly entrenched by judicial precedent. Dr. Borchard of Yale, as a result of his recent extensive study of the question of governmental liability in tort, recommends that public governmental corporations as well as the state itself should be subjected to liability in every case in which at present the active agent in the tortious act is today liable. Applying his recommendation in the instant case, the city itself would be held directly liable in place of its agent, the board of education. Admitting the desirability of such a change, the problem of the effective legislation required to bring it about may well command the attention of students of our social and political institutions.

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Municipal Ownership—Power to Dispose of Plants.—In view of the concerted plan of the public utility interests in certain states to induce municipalities to go out of the business of supplying gas, electricity or water to their inhabitants and to substitute private ownership and operation, as the evidence before the Federal Trade Commission in its present investigation points out, the question of the power of cities to dispose of such plants is being frequently raised. That a municipally owned water or lighting plant is charged with a public interest, so that in the absence of an express legislative authorization, it cannot be sold under a general power to dispose of property is generally established, the only exception being for that part of the plant that has become useless through obsolescence (*Haron Water Works Co.* v. *Huron*, 7 S. D. 9, 62 N. W. 675).

In *South Texas Public Service Co.* v. *Jalin*, 7 S. W. (2d) 942, finally decided by the Court of Civil Appeals of Texas on June 13, 1928, the court affirmed a decree against the city of New Braunfels and the appellant company, canceling a contract between the city and the service company, an ordinance ratifying it and a bill of sale, whereby the former attempted to sell to the latter its electric street lighting system. The electric system had been built with proceeds of bonds issued for extensions to the waterworks system, and was operated in conjunction therewith for the purpose of lighting the streets. The defendant company furnished the inhabitants with electric service under an existing franchise, and the contract of sale included a provision for the supply of street lighting for a term of years at a stipulated rate. The statutes of Texas (Act 1112 R. S. 1925) expressly provided that "no such light or water system shall ever be sold until such sale is authorized by a majority vote of the qualified electors of such city or town." The contention of the appellants was that this clause applied only to such municipal plants as furnished service to the inhabitants and under the terms of the statute could be mortgaged. The court disposed of the case by holding that the clause covered municipal plants not operated for revenue. It would seem that it might quite as well have admitted the appellant's contention and placed its decision upon the lack of an express legislative authorization to dispose of the property, which the city held charged with a public trust for the benefit of its inhabitants.

A similar question was raised in the case of *Curry* v. *Highland Park*, 219 N. W. 745 (June 4, 1928), in which the Supreme Court of Michigan held that the city in the absence of express statutory authority could not dispose of its garbage plant which was located some distance outside the city limits. The court, however, instead of resting its decision upon the lack of power to dispose of property charged with a public trust without express legislative authorization, limited the application of this principal to property used to discharge a governmental as distinguished from a proprietary function, which was determination of the case as the disposal of garbage is held to be a governmental function in Michigan. While the court came to the correct conclusion, it is submitted that the agreement in the opinion would narrow the application of the principle much further than the court would go were the question of the disposal of property held in a proprietary capacity but charged with a public trust directly in issue.

That the delegated power to dispose of municipal property must be exercised in the mode laid down by the legislature is illustrated in *Russell* v. *Bell*, 6 S. W. (2d) 236, decided May 1, 1928. In this case the Court of Appeals of Kentucky reversed the lower courts on an appeal sustaining a demurrer to a taxpayer's action to recover for the city either the property itself or the difference between the sale price and the actual value of a municipal lighting plant sold by virtue of a resolution, instead of an ordinance as required by the statute granting the power of disposal. While holding that in absence of allegations of fraud the members of the board of aldermen would not be personally liable, they were held to be necessary parties to the suit.

Where, however, the state as in Georgia confers full power upon the city to dispose of any of its public utility plants, subject only to a referendum upon the timely protest of ninety per cent of the qualified voters, but expressly disclaims modifying existing powers of cities to sell, the Supreme Court in *Byrd* v. *City of Alena*, 143 S. E. 767, sustained a sale of the municipal electric light plant, though the referendum held it was void. The Georgia statute is probably the most liberal to be found, and the disclaimer of modification of outstanding powers renders the acquisition of municipal utilities by private interests extremely easy to accomplish.

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Definition—The Municipal Concept.—The content of the term "municipal corporation" has been one of the serious questions confronting the various commentators who have essayed the task of collecting and digesting the mass of law relating to local governmental agencies. An exhaustive treatise on this subject, such as the monumental work of Judge Dillon or more recently the encyclopædic compendium of Judge McQuillan, must necessarily include the consideration, not only of those corporate agencies to which the state has committed the exercise of a portion of its legislative power for local purposes, but also of those other so-called quasi-municipal corporations which are created by the state to aid in the administration of purely governmental powers within defined territorial limits, such as school districts, road districts, reclamation and irrigation districts and in the majority of our states, counties and towns. As a practical mat-

ter, the question arises whether the term should be limited to the first class of agencies, the prime characteristic of which is the delegated power of local self-government, as exemplified in cities and villages and the New England town or be extended to cover the ever increasing number of local corporate agencies which have been multiplied to take care of the rapid extension of governmental functions. The question is complicated by the fact that in many of our state constitutions certain provisions, as those imposing limitations upon local indebtedness or special legislation, employ the term either expressly or by necessary intendment to include both classes (*State* vs. *Leffingwell*, 54 Mo. 458; *In re Dowlan*, 36 Minn. 430), and by the further fact that certain generic terms as town or county are frequently applied to local organizations with full powers of local self-government (*State* vs. *Glennon*, 3 R. I. 276; *In re Holmes*, 187 Cal. 640).

Judge Dillon after a thorough examination of the authorities formulated the following lucid definition; "the incorporation, by the authority of the government, of the inhabitants of a particular place or district, authorizing them in their corporate capacity to exercise subordinate specified powers of legislation and regulation with respect to their local and internal concern." He thus recognized and emphasized the delegated power of local self-government as the distinctive purpose and distinguishing feature of a municipal corporation proper. McQuillan in his latest edition adopts the following phraseology: "A municipal corporation proper may be described in outline to be a legal institution, or body politic and corporate, established by public law, or sovereign power, evidenced by a charter, with defined limits and population, a corporate name, and a seal, though a seal is not essential, and perpetual succession primarily to regulate the local or internal affairs of the territory or district incorporated by officers selected by the corporation, and secondarily to share in the civil government of the state in the particular locality." This somewhat unnecessarily complex definition, elaborated through some fifty pages of text and notes, may hardly be regarded as an improvement upon the more simple and accurate statement of Judge Dillon. The emphasis in his commentary upon the value of the distinction set forth in *Hamilton County* vs. *Mighels* (7 Ohio St. 109) that municipal corporations in contrast to quasi-municipal corporations are based upon the free consent of the inhabitants, a doctrine that has had a marked historical effect upon the theory of corporate liability, may well be perversive of correct and clear analysis, while his inclusion of the requirement of a charter, which left unexplained would imply a formal charter, adds little or nothing to the delimitation attempted. The inclusion also of elements that inhere in all corporations, private as well as public, seems unfortunate.

Both authorities, however, agree in confining the term municipal corporations to those corporate governmental agencies to which for local purposes has been delegated a part of the state's sovereign legislative powers. With this as the primal test, the student may readily determine from the presence or absence of such powers the nature of the corporation, whether called a city of a county, a town or a district. The extent of these delegated legislative powers as set forth in the state constitution, the general statutes and the local charter determines the status of the corporation and serves as the criterion by which the courts can measure the intention of the legislature to vest it with powers incidental to and implied from those expressly granted either in general or specific terms. With this concept in mind, it matters little in determining the scope of implied powers to what extent the state has delegated to the municipal corporation the administration of general governmental duties, which for convenience it has for the most part committed to other local corporate agencies, as counties and towns, which may be appropriately designated as quasi-municipal corporations.

PUBLIC UTILITIES

EDITED BY JOHN BAUER

Director, American Public Utilities Bureau

Utility Consolidation and the Public Interest.—The Consolidated Gas Company of New York filed a petition with the Public Service Commission of the state of New York for permission to acquire the capital stock of the Brooklyn Edison Company, and to pay for such stock—each share $100 par value—one share of its own $5 preferred stock of no par value, and one share of common stock of no par value (the latter to be split into two shares each). The purchase had been ratified by the stockholders of both corporations and needed only the approval of the Commission to become effective.

The purchase is a transaction of unusual magnitude, and involves public interests of far-reaching significance. As to magnitude, the Consolidated Gas Company is already a half-billion dollar corporation. As of December 31, 1927, it had reported assets of $521,242,000, which included direct gas properties, $98,-852,000, and investments in "affiliated companies," $387,821,000. The Brooklyn Edison Company as of the same date, reported total assets of $171,747,000, which consisted altogether of electric plant and equipment, together with working capital and miscellaneous assets.

Through this acquisition, the Consolidated system will control practically the entire electric field in the city of New York. It also controls the entire gas field, except the Brooklyn Union Gas Company, with which it is said to have close affiliations, and which is expected to come under direct control at a later date. It thus represents the largest single control in any city of the country.

The merger, popularly so-called, had been a matter of rumor for more than two years. That it would be approved without serious inquiry by the Public Service Commission had been generally assumed. The petition was presented at the threshold of the summer vacation period. This fact was expected to limit the available time for discussion; so important a matter could not be postponed until after Labor Day; nor could the Commission be expected to give up its vacation to continue drawn-out hearings. This program of casual expedition was temporarily frustrated by the appearance of the City of New York, and by the Public Committee on Power for the state of New York.

The City of New York took the ground that the purchase price represented by the Brooklyn Edison stock was unjustified. This was based on the market price of the stock during June and July of this year, at an average figure of $250 per share. The actual investment in property represented by the stock is under $100 per share. The high market price was reached during the past year as the result of the rumors of the proposed merger and the effort to buy up the stock. The city objected to the recognition of this market price as the basis of the merger. Its position was predicated formally upon the law regulating the issuance of public utility securities, and practically upon the probability that such a value would be urged subsequently to justify a higher valuation for rate-making.

The city recognized that economies might be effected through the merger, but it pointed out also that there might be public disadvantages through the loss of "system" competition and through the possibility of larger overheads and outside control. It urged, therefore, that prior to the approval of the merger, the Commission should insist upon a reduction in rates from seven cents to five cents per kilowatt hour as the maximum for domestic and commercial uses. This would assure the public at once a proper share in the benefits of the merger, and appeared feasible even under present earnings of the companies concerned.

The Committee on Power appeared to urge upon the Commission the necessity of considering the public aspects of the proposed purchase and the need of bringing out all the available facts as to economies of operation, the relation with outside companies, the effect upon state regulation, and, particularly, the relation to future water power development in the state. It did not outright oppose the merger, but it desired to have the basis of the merger safeguarded in the interest of the public.

The Committee consists of well-known people,

and was organized about two years ago primarily to support Governor Smith's water power program. It has continued in existence; its experts have been studying public utility regulation, especially electric light and power, from a broad public standpoint. The Committee's representative was met by the Commission's ruling that he would not be permitted to participate in the hearings. He argued that the proposal is not just a private arrangement between individual stockholders; that it involved the public interest at large; that any substantial and known public group should have a hearing, to present such facts and views as might be helpful to the Commission; that the privilege of being heard should not be controlled by narrow technical rules. He was permitted to file a brief, but was denied the right to cross-examine witnesses or to present evidence.

The refusal to admit the Committee to full participation in the hearings aroused much public discussion. It promptly became not only an important local, but a national issue, because of the prominence of several members of the Committee and because of the relations of some of them to Governor Smith and his water-power program; also because Commissioner Van Namee, closely affiliated with Governor Smith's campaign management, had joined in the ruling of the Commission.

The hearings were closed with striking promptitude; only two meetings were held. The city had requested two weeks' adjournment to complete its study of the facts and prepare for cross examination; but, instead, was given four days to file a memorandum. It filed a day late, and was duly reprimanded; no real opportunity for cross examination had been given. Then the tempest burst. Governor Smith asked the Commission to reopen the case and to hear whatever any public group might have to say for or against the merger. This request was denied, on a strict party vote. Commissioner Van Namee now joined with Commissioner Lunn to vote for a re-hearing, whereas Chairman Prendergast and Commissioner Pooley voted against; the fifth Commissioner, Mr. Brewster, was absent because of illness.

That the merger involves important matters of public policy there is no doubt. That in a narrow legal sense the Committee had no interest in the matter also appears true. But the Commission is not controlled by limited legal procedure; it is free to draw upon information from any source whatever, and may call in the assistance of any group of people it pleases. Naturally, it could not listen without limit to everybody, if hundreds of individuals requested to be heard. It could, however, use discretion. Besides the city, the Committee was the only public group which desired any real participation. Its responsibility was beyond question, and its representative is a well-known member of the bar. There was no good reason why it should not have been granted a full hearing, and why this could not have been granted promptly by all the members of the Commission upon the special request of the governor.

On August 9, the Commission, by unanimous vote of the four commissioners present, approved the petition; Commissioner Brewster was still absent on account of illness. It did, however, expressly limit the statement of capital expenditures on the part of the Consolidated Gas Company to the issue value of the Brooklyn Edison Company in line with the position taken by the city. It has thus minimized the possibility of the market value of the stock at the time of the exchange being subsequently entered as an element of "fair value" for rate-making.

The city's suggestion that rates should be reduced as part of the consolidation program was not followed. The Commission refused to bring rates into the matter; rates can be handled separately later, it held. It referred to past voluntary reductions on the part of the Brooklyn Edison Company, and pointed out that the Commission itself was created for the express purpose of supplying the equivalent of competition; that it can be depended upon to protect the public "from the inertia of monopoly and the evils of competition." The public, however, would have felt more assured of the protection if an immediate reduction had been passed along. The Commission's zeal on behalf of the public has not always been strikingly apparent.

Perhaps the particular case will be duly safeguarded. There is the large city which happily has all along assumed actual responsibility for public utility consumers. But the instance reveals how the vast number of mergers of the country have come about. Usually they are treated as casual matters; mere routine; little or no examination of the purposes and consequences; no positive safeguard of public interests. Here is the reason why usually the public fails to benefit, and why public resentment against holding companies and commissions is rising.

Decision in New Haven Commutation Reaffirmed.—On July 15, 1925, the New York Public Service Cmmoission authorized an increase of about forty-four per cent in commutation rates charged by the New Haven Railroad Company upon intrastate travel to and from New York City. This increase affected New Rochelle, Mount Vernon, Portchester, and other municipalities in Westchester County. Sharp public opposition was aroused, and upon petition by the communities, a re-hearing was granted by the Commission. The higher rates, however, continued; meanwhile rebate slips were given to the commuters. The City of New York had not appeared in the original case, but joined as a party in the re-hearing.

The principal basis for a re-hearing, especially on the part of the cities of New York and Mount Vernon, was to present evidence as to the "differential" cost of carrying commuters and regular passengers. The railroad had presented its entire case upon the assumption that it costs as much to carry a commuter as a regular passenger. It had made a comprehensive study for the month of June, 1924, including all the elements of cost (operating expenses, taxes and return on the property) within the state of New York. It first separated these costs between trains that carried intrastate commuters, and those that did not ("study" trains and "non-study" trains), and made the separation principally on the basis of car miles, or car units. The costs thus allocated to the "study" trains were then apportioned between commuters and regular passengers, on the assumption of equal cost per passenger or per passenger mile.

This method of determining the cost of carrying the commuters furnished the chief issue in the re-hearing. There were other issues, but they were of minor character. In its 1925 decision, the Commission accepted the results of the company's allocation, which showed a loss of $127,000 a month from the intrastate commutation business. In the petition for re-hearing, the cities of New York and Mount Vernon contended that the basis of cost apportionment was wrong, that it costs less to carry a commuter than a regular passenger, and that a "differential" should be established on the basis of which the allocations should be made.

After the re-hearing had been granted, the petitioners made a request for certain operating data which, it was claimed, would furnish the basis of the differential for a new cost allocation. The company refused to supply the data except upon order of the Commission, which did not issue the order as requested, but modified and greatly limited the scope of the facts to be supplied. The municipalities were thus unable to make as comprehensive a study as had been expected. They succeeded in obtaining data only as to a few selected trains. Using the limited figures, their experts computed the cost differentials, and made a reallocation of costs accordingly, taking the basic costs as presented by the company in the original hearings.

The costs were separated into two groups: (1) those that varied in relation to train or car loading; and (2) those that were of a general overhead or nonvariable character. As to the first group, the municipalities attempted to show that it costs about three times as much to carry a regular passenger as a commuter; and as to the second group, six and one-half times as much. Upon this basis they separated all the costs between commuters and regular passengers; with the result that they showed for the month of June, 1924, a profit of $39,000 from the intrastate commutation business, above all operating expenses, taxes and return on property, instead of the loss of $127,000 claimed by the company.

This difference in results is striking; it is due wholly to the basis of apportionment used. If it be assumed that it costs in every respect as much to carry a commuter as a regular passenger, the company is right. If the differentials as claimed by the municipalities are correct, then their computation of a $39,000 profit per month is correct. The municipalities admitted that the extent of data was rather limited; they had sought all the facts, but were denied access to them; they insisted that a complete survey would reveal even greater differential ratios than those used. The differentials are due to the enormous density of traffic on the part of commutation, and the low density on the part of the regular passenger business. This applies not only to the ordinary train costs, but especially to the overhead or nonvariable costs. The greater the volume of business, the less the cost per passenger or per passenger mile

In its decision handed down August 1, 1928—three years after the first decision—the Commission refused to alter its original position. Whether the municipalities will attempt to have the decision reviewed by the courts, has as yet not been determined. The Westchester commuters are thus required to pay an increase of

forty-four per cent in rates, which are much higher than those charged by any of the railroads entering the city of New York.

This decision has important bearing not only in the New York district, but throughout the country where commutation business exists to any considerable extent. If the company's theory of "equal cost" is to be accepted, as validated by the Commission, then, undoubtedly, the commutation rates throughout the New York-Metropolitan district should be increased; and the railroad companies will doubtless move speedily for higher rates. Upon the same theory, probably all commutation rates throughout the country are too low, and sharp increases would be justified. If the theory is followed to a logical conclusion, the commutation rates should be placed upon the same level as ordinary passenger rates. It leaves no sound basis for the long existing difference in rates between the two classes of passengers.

What is theory, and what is fact? The municipalities attempted to show as a fact that in respect to all cost elements the amount chargeable to a regular passenger is materially greater than can be properly allocated to a commuter. This applies to all train costs, because of the much greater loading of commuter trains, and because of the inferior service. It applies particularly to other costs (the non-variables) because of the enormous commuter density during the period of the commutation traffic as compared with the regular business. The Commission accepted the company's theoretical view of equal cost, and disregarded the great differences in density and conditions of service as having any bearing upon the relative cost allocation.

A special point involved the allocation of all costs connected with the Grand Central Terminal. This is a monumental structure which required a huge investment, and demands a large annual expenditure for operation, maintenance and return on the investment. In the company's analysis, all these costs were equally divided per passenger between commuters and others; and this received the approval of the Commission. The fact was disregarded that the terminal was constructed primarily for the use of the general passenger traffic for the entire New Haven, as well as the New York Central Railroad, and not for the needs of the commuters. The latter have little occasion to use the terminal, and would be as well served without it; yet under the decision, they are required to pay just as much per passenger as the through Pullman traffic which is dependent upon the station facilities.

The Commission apparently did not consider seriously the questions of cost apportionment presented by the municipalities at the re-hearing. It limited itself strictly to "new evidence," and plainly did not regard the reallocation and the data bearing upon apportionment as constituting "new evidence." It thus restricted its judgment by technicalities and arbitrary limitations imposed by itself. There was no reason, in the first place, why it should not have complied with the request of the municipalities for all the basic facts which were deemed necessary for the cost study along the lines proposed. If in the earlier hearings the proper basis of apportionment was not sufficiently presented, then why not require the company to furnish all the facts necessary to make the desired allocations? Why limit the data to a few trains, when all the essential facts could have been readily obtained, covering the entire traffic for a reasonable period of time?

This decision is glaringly inconsistent with another, made five months earlier, in the Long Island commutation case. The Long Island Railroad Company had sought the approval of a twenty per cent increase in commutation rates, and, apart from mere differences in technical computations, it based its case upon the same theory as the New Haven; it assumed that it costs just as much to carry a commuter as a regular passenger. The Commission here, however, rejected the equal cost theory; it decided that the company had not proved its case, and denied the proposed increase.

If the equal cost theory was untenable in the Long Island case, why is it acceptable in the New Haven case? If the Long Island failed to prove its case, so did the New Haven. If the latter is justly entitled to an increase in rates, so is the Long Island. The technical limitation of the re-hearing to "new evidence," when the latter was circumscribed by the Commission itself, cannot obviate the fact that the fundamental principles adopted in the two cases by the Commission are utterly irreconcilable, and that the underlying theory of the latest decision will justify increases in all commutation rates to the point of extinction of the commutation business.

WHO ARE THE PROPAGANDISTS?

The Federal Trade Commission has continued to rout out the public utility propagandists. Even during the summer recess it has continued its special investigations; covering not only scope and methods of publicity, but also financial practices, and inter-company relations. The hearings revealed the practices of the propagandists, their far-flung organization, and their cynical methods.

We shall not repeat here any of the details, but wish to present reflections which, we believe, are close to reality. From the outset, we wondered to what extent the utilities were directly involved in the sinister activities, and whether they were thoroughly conscious of the anti-public practices. As we followed the investigation, and considered our experience and contacts during the past fifteen years, we have rather come to the conclusion that the utilities have been grossly imposed upon by a comparatively small group of self-seekers, who in no sense represent the regular managements, either in their public relations or financial politices.

Who are the propagandists? They range from the Paul Clapps to the Sheridans; renegade public employes and newspaper men; hardly a one of them who had grown up with the utilities in the actual construction, operation, or finance. They grafted themselves upon a few powerful personalities, and through their cleverness have been able to involve the whole industry in public perversions and seditious activities.

We doubt whether the rank and file of utility men have known what was going on. They have been so busy with their daily problems of plant extension and finance, the furnishing of service and the building up of proper public relations immediately on the ground, that they did not realize what activities were being carried on by these few outsiders; were hardly aware of their existence.

We hope that the financial practices will also be thoroughly gone into by the Federal Trade Commission; and we confidently believe that the great majority of actual managers and financial officers have had no share in the pernicious policies that have been fostered. The company pyramiding and the various holding company evils, we feel certain, have been mostly perpetrated by outside speculators who have left the local officials to face the ruffled public and to bear the consequent attacks upon private management. There are instances aplenty; let the Commission spread them on the record. The preposterous valuations contended for and unhappily approved in far too many instances by commissions and courts, have had their technical and legal support principally in outside talent,—engineers and lawyers bent upon the immediate object and irresponsible as to ultimate consequences to the industry. They have furnished the major support of reproduction cost, high overheads and going values, and the elimination of depreciation.

All this is, of course, unfortunate for the utilities themselves, considered from a long-run standpoint. The holding companies, as such, have undoubtedly their place; they are excellent devices by which to effect economies in the public interest, *i.e.*, if they are not exploited by financial and professional freebooters. If private ownership and operation has stood the test of experience, it needs no hidden propaganda for support. It can be safely left alone; actual management must stand or fall upon its own record.

The industry needs, above everything else, to free itself of the incubus of the outside publicity, financial, and professional parasites. It needs to establish self-determination; let the policies be determined by the people who are responsible for running the business and for getting along day by day with the public. If these groups resume control and dictate the policies, there will be little danger to private ownership and operation. If the prevailing outside domination is continued, private ownership and operation cannot be preserved even by hidden and high-powered propaganda,—but can be thus destroyed more quickly.

GOVERNMENTAL RESEARCH ASSOCIATION NOTES

EDITED BY RUSSELL FORBES

Secretary

Recent Reports of Research Agencies.—The following reports have been received at the central library of the Association since July 1, 1928:

Detroit Bureau of Governmental Research:
The Cost of Government, City of Detroit 1928–1929.
The Teachers' Retirement Fund.

Fall River, Mass. Taxpayers' Association:
Increased Operating Expenditures in 1928.

Bureau of Governmental Research, Kansas City, Kansas, Chamber of Commerce:
The Collection of the City Dog Tax; a memorandum submitted to the commissioner of finance and revenue.

Bureau of Research, Newark, N. J. Chamber of Commerce:
Inter-Municipal Coöperation in the Newark Metropolitan District.

Research and Information Department, Ohio Chamber of Commerce:
Summary of Constitutional Provisions on Taxation of Various States of the Union.
Compulsory Automobile Liability Insurance.

Philadelphia Bureau of Municipal Research:
Universal Metering in Other Cities.

Schenectady Bureau of Municipal Research:
Report on Suggested Program of Architectural Competition for City Hall Building.

St. Paul Bureau of Municipal Research:
Supplementary Report on the Improvement of the Saint Paul Airport.
Tabulation Showing Debt Charges of City and County through 1937.
Memorandum re Repavement of Business Streets.
The Charter Amendment Empowering the City to Own and Operate Bus Lines.

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The Annals of Collective Economy.—The 1928 edition of the *Annals of Collective Economy* will contain several articles on governmental and economic problems of the United States. Included in these will be a discussion of the Governmental Research Association and the work of its member organizations. The *Annals* is edited by Edgar Milhaud, professor of political economy at the University of Geneva. The regular subscription price is $5 per year, but any member of the Association may secure it for a special rate of $3.

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Local Self-Government Institute, Bombay Presidency, India.—The Institute is conducting this month an exhibition of governmental activities. The exhibits will be arranged in five divisions to demonstrate: the ideal of local self-government; culture of the community; health of the community; wealth of the community; and administration of the local governments. It is planned to make the exhibition an annual event in the future. Methods in vogue in western countries and the degree of their utility in solving Indian problems will be shown.

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Boston Finance Commission.—During July the Commission issued reports on the method of checking bills practiced by the school department; the cost of land taken for school purposes during years 1917–1927, inclusive; and the use of back taxes and reimbursement money received from the Boston Elevated Railway Company to reduce the tax rate for 1928.

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Buffalo Municipal Research Bureau, Inc.—During the summer months, the Bureau has been giving attention to three major projects: (1) a survey of the water bureau, (2) assisting the civil service commission in a comprehensive salary standardization study, and (3) assisting the comptroller in accounting revision work.

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California Taxpayers' Association. The Los Angeles city and county public recreation survey unit of the California public recreation survey, conducted by California Taxpayers' Association for the past eight months, will be brought to a close in approximately thirty days. This sur-

vey is unique in that it deals with the coördination of organization and administration of parks, parkways, playgrounds, beaches and all other publicly-owned recreational facilities.

In coöperation with the various departments of government, formulae are being developed to measure the recreational functions of government and the waste in connection with lands, buildings, equipment, maintenance, programs, etc. From these data the present and future public recreation needs are being measured as a basis of recommendations for providing adequate and economic recreation. The Los Angeles park, playground and public school departments have coöperated in making numerous special audits and research studies to provide this survey with a comprehensive basis for analysis of cost and efficiency of recreation as a whole. In addition to these data and the direct measure of the recreational needs of Los Angeles city and county, more than 500 returned questionnaires from all states and the leading cities of the country provide a counter check for the various problems on which opinions have differed.

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Des Moines Bureau of Municipal Research.—A report to the county supervisors revealed unmistakable evidence of "time padding" by precinct officials in the June county primary election. As a result the county supervisors agreed to make a closer check of "time claims" of election judges and clerks at the coming November election and to place officials supervising the preparation of election on a mileage allowance instead of $10 per day as heretofore allowed. Numerous claims for over twenty hours' work in the polling places on primary election day were filed, although voting machines are used here.

The bureau is coöperating with the League of Iowa Municipalities in preparing legislation enabling cities to spend money for airports and to supervise air traffic.

Publicity reports were prepared analyzing the bonded debt of the local subdivisions and garbage collection and disposal. This city, after spending $60,000 in 1918 for an incinerator plant, discontinued its operation and the plant has remained idle for a number of years.

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Detroit Bureau of Governmental Research.—Progress is being made in the work of the Committee on Uniform Crime Records of the International Association of Chiefs of Police, and the advisory committee, of which Dr. Lent D. Upson is chairman. A digest of the criminal statutes of some thirty states has been completed, covering the definition of major offenses. With the completion of this digest for all states, material will be at hand for the preparation of uniform definitions of crime to be used by police departments in reporting. This will constitute the second report of the committee. The first will deal with the procedure of recording complaints, and the third with methods of record keeping. Coöperation from the Bureau of the Census, Bureau of Criminal Identification of the Department of Justice, and International Association of City Managers seems assured.

The Bureau memorandum outlining the possible purposes of a crime commission was utilized by the Detroit Board of Commerce in organizing a local commission. The commission is duly incorporated and will be actively at work in the fall.

The report of the sub-committee of the committee on state and local taxation of the Chamber of Commerce of the United States, of which Director Upson is chairman, has been submitted and reviewed. This report deals primarily with capital expenditures and their relation to taxation.

The report on the status of the teachers' retirement fund has been distributed. This report shows that, upon a full reserve basis, there is a deficit of $8,700,000 in the fund. Realizing the futility of raising this sum by taxation, the Bureau recommended a reserve for those now on the retirement list and a reserve of the amount that might be withdrawn in cases of resignation.

At the request of the budget director, the Bureau is undertaking a study of the five pension systems supported wholly or in part by the city, and one additional proposed system for the employees of the Library. It is believed that all of these funds should be brought up to a full reserve basis, rather than continuing upon a cash basis, and that the benefits, contributions, etc., for each fund should be uniform.

Following the refusal of the voters last fall to approve a proposal to place the county's capital improvements upon a pay-as-you-go basis, the Bureau is coöperating with the county officials in the preparation of a ten-year improvement program which it is hoped will overcome the objections of the prior proposal, and enable construction work to be financed by a ten-year tax levy for capital purposes.

The board of assessors recently gave assurance that the assessment manual, which was drafted over two years ago by the Bureau accountant and the chief engineer of the board of assessors, will be published within a few weeks. This manual sets forth in some detail the procedure followed in assessing real and personal property in Detroit.

In this connection, the Bureau is giving some consideration to a procedure which would permit the mechanical preparation of all assessment rolls, tax bills, etc., in the county through one central office. A trip of inspection was taken to Chicago, where Cook County has had such installation in effect for about five years.

The city council recently set up by ordinance a board of condemnation commissioners which is empowered to investigate all proposed condemnation proceedings and to report recommendations thereon to the council. Some work has been done with the chairman of this board, Mr. Thomas M. Corcoran, relative to the extent of use of special assessments.

Considerable detail work was done for the governmental committee of the Board of Commerce in outlining memoranda to the mayor and to the common council upon the budget for the year beginning July 1. The budget as finally approved totals $142,262,342, and the Bureau has published a number of *Public Business* which gives an analysis of the same.

The Bureau has also analyzed the city's bonded debt as at June 30, which totals $249,000,000. This analysis will be published as an early number of *Public Business*.

At the request of Mayor Tenerowicz, of the City of Hamtramck, the Bureau spent some time reviewing the budget of that city, with the result that the mayor was able to reduce the tax rate $1 for the year. Some other detailed studies were made, including the proposed installation of an appropriation ledger, the clerical department of the justice courts, and the city's bonded debt.

Attempt to improve the street sanitation procedure has continued unabated. Incident to moving the water board into a new $2,000,000 building, the Bureau has been making a study of the organization and business procedure of that department. Engineer Place has prepared a number of charts indicating the metropolitan areas of the greater Detroit. He has also made a study of proposed airport sites, at the request of certain councilmen.

The Bureau also made a study of the financial procedure of the village of Halfway, and Harrington Place, the Bureau engineer, made a study of the Buffalo water department, for the Buffalo Bureau of Municipal Research.

*

Civic Affairs Department, Indianapolis Chamber of Commerce.—The department has submitted a comparison of the number of policemen and firemen in twenty-eight cities, including Indianapolis, to the mayor, the board of public safety and the city council of Indianapolis for their use in consideration of requests for large increases in personnel of the two departments.

The department has made a study of the city sinking fund needs for twelve years and has set up a program which would spread the burden over the period without undue burden in any single year. The program was adopted by the mayor and city controller and the tax levy proposed for the first year was recommended to the city council for adoption by these officials.

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Taxpayers' Association of New Mexico.—The Association, which has been mainly responsible for the initiation and continued operation of the budget systems for state and local governments in New Mexico, was represented at the hearings on local budgets before the state tax commission during the month of August. The director of the Association has attended the budget hearings in many of the counties, cities, towns, and villages and assisted in the preparation of the estimates which will be passed upon by the state commission.

A complete report of expenditures under the budget was made for the first half year ending December 31, 1927. Early in the second half of the year statements were sent to members of the boards of county commissioners, with comments and suggestions as to the necessity of restricting expenditures both within the budget estimates and within the actual cash receipts available for the year.

*

Schenectady Bureau of Municipal Research.—*Capital Budget Commission.*—The mayor's special commission appointed to study the financial structure of the city government, together with the preparation of a long-term financial program, has held several meetings, and considerable progress has been made along two fundamental requirements; namely, that of contacting the heads of the various city departments and also various

civic organizations. Budget request forms, calling for the anticipated expenditures for each of the next five years, have been sent to all department and bureau heads. Schedules of major improvements have also been requested from the various departments, so that the commission might get first-hand information as to the vital needs of the city with regard to its capital outlays, as well as its anticipated expenditures for current operation.

Civil Service Study.—Fred Telford, director of the Bureau of Public Personnel Administration, Washington, D. C., visited the Bureau on August 3, in connection with the survey of the local civil service department. Mr. Telford also addressed a joint meeting of the capital budget commission and civil service commission on the subject of "Job Classification and Salary Standardization."

City Hall Plan Competition.—The directors of the Bureau have submitted a communication to the mayor indicating that the Bureau is in favor of holding an open competition among local and non-resident architects for the purpose of securing the best possible design for the proposed new city hall building. A report outlining the proposed plan of competition in detail has been prepared, subject to the approval of the American Institute of Architects, and will be submitted to the mayor soon, as the Bureau's suggestion of the manner in which the proposed architectural competition should be held.

*

Toledo Commission of Publicity and Efficiency.—The secretary of the Commission spent most of the month of July in editing, arranging, and indexing Toledo's proposed City Manager-P. R. charter. It was approved by the charter commission on July 30 and will be submitted to the electorate on November 6. A brief discussion of the main provisions in the charter will be found elsewhere in this issue of the REVIEW.

At the request of the mayor, the Commission, in coöperation with the building inspector, will draw up a new building code for Toledo, to replace the 22-year-old code now in effect. This work will be completed by January 1, 1929.

A summary of municipal radio legislation was printed in the *Toledo City Journal* of July 14. Eight cities were found to have ordinances dealing with local radio interference.

The recent Toledo Port Survey, made by Griffenhagen and Associates, will be printed in the near future as a supplement to the *Toledo City Journal.*

*

Toronto Bureau of Municipal Research.—The analysis of the city's budget for the year 1928 has been completed. Three reports bearing on the subject have been drafted. The first, dealing with the amount of taxation and the assessment on which taxation in Toronto is based, with a comparison over a period of years, has already been issued. The second, dealing with the expenditures from the standpoint of activities performed, and the third from the standpoint of things purchased, will be published later in the year. These also give comparisons with last year.

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Utah Taxpayers' Association.—The manager of the research department is now engaged in analyzing the audits of the various taxing units, by calling in the organized taxpayers of that group, giving them a complete picture of the manner in which their local affairs are being conducted, and then urging the local group as the constituent voters of that district to call upon public officials to press the reforms called for in the audits.

While Utah has only twenty-nine counties, it has 211 taxing units, all of which are visited during the year with the above-named program.

NOTES AND EVENTS

EDITED BY RUSSELL FORBES

The Sixth Commonwealth Conference at the State University of Iowa.—Under the auspices of the State University of Iowa the Sixth Commonwealth Conference was held at Iowa City on July 9–11, 1928. Benj. F. Shambaugh, chairman of the conference, presided at all the sessions. The purpose of this meeting was to stimulate a creative interest in commonwealth problems through the discussion of current political issues. Representatives were present from at least twenty-five states and from more than forty colleges and universities. Nor were the delegates confined to representatives of the academic group. Representatives of commercial enterprises, Congressmen, members of the state legislature, editors, and men and women of public affairs throughout the state and nation were present.

The theme of the conference was "The Political Issues of 1928." The outstanding aspects of these issues were presented at five round table sessions. The first of these round table discussions, dealing with the question of agricultural relief, centered around a consideration of the McNary-Haugen Bill and aroused a spirited debate on the merits of that measure. The discussion was opened by F. H. Knight of the University of Chicago and Ivan L. Pollock of the State University of Iowa. Almost alone, H. M. Havner, former attorney general of Iowa, assailed the measure as being economically unsound. The measure was supported by Henry A. Wallace, editor of *Wallace's Farmer*, Congressman L. J. Dickinson, and Harvey Ingham, editor of *The Des Moines Register*.

At the second round table, dealing with the subject of government and business, the Boulder Dam project, Muscle Shoals, public utilities, and similar subjects were considered. The discussion was led by William B. Munro and participated in largely by representatives of the academic group.

The round table on the federal government and the states was of a practical nature. It centered around a consideration of injunctions in labor disputes and was led by Martin J. Wade, judge of United States District Court—a man of wide experience in dealing with the legal aspects of labor disputes.

Much interest was manifested in a discussion of the Eighteenth Amendment. Arguments were presented both for the repeal of the law and for its support and vigorous enforcement. Discussion was opened by H. L. McCracken, president of Pennsylvania State College. The appeal for modification was led by Stuart Lewis of the New Jersey Law School.

Under the topic of foreign relations consideration was given to Latin-American affairs, the Philippines, Nicaragua, cancellation of war debts, and renunciation of war. This discussion was led by I. J. Cox of Northwestern University, and J. Ralston Hayden of the University of Michigan.

Aside from the round table discussions, the Conference sponsored a number of public addresses at which the political issues of 1928 and the presidential candidates were discussed. The subject of government and business was presented in a brief address by William B. Munro. Kirk H. Porter addressed the conference on the subject of political platforms. Francis W. Coker, Thomas H. Reed, William B. Munro, and A. R. Hatton discussed the personalities and characteristics of Herbert Hoover and Alfred E. Smith.

An outstanding feature of the Sixth Commonwealth Conference was the distribution of a one-hundred-page program-pamphlet in which twenty-two topics were briefly and concisely defined. These programs were distributed throughout the country in advance of the meeting of the Conference.

Each round table was attended by approximately five hundred persons. Over one hundred persons participated in the discussions.

J. A. Swisher.

State Historical Society of Iowa.

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Convention of the American Legislators' Association.—The American Legislators' Association, organized in 1925, held its third annual conference on July 23,1928, at Seattle, Washington. This Association is independent of, al-

though closely allied with, the National Conference of Commissioners on Uniform State Laws, which held its meetings July 17 to 23, at the same place.

Only one formal meeting was held, at which the speakers were Mr. Gurney E. Newlin, Los Angeles attorney, member of the Conference on Uniform State Laws, and recently elected president of the American Bar Association; and Hon. F. Dumont Smith, of Hutchinson, Kansas. William Draper Lewis, director of the American Law Institute, and Dean Roscoe Pound of Harvard Law School, who had originally expected to be present as speakers, were unable to be in Seattle for the conference.

The attendance was small but earnest. Mr. Newlin advocated increasing the salaries and lengthening the term of office of state legislators as a means of attracting a higher type of incumbent. Mr. Smith's theme was the compilation of the statutes of Kansas into the code of 1923. He explained that there had been no revision of these statutes since 1868; that the governor had appointed United States Senator Chestor I. Long as a commissioner to codify the laws; that Senator Long was succeeded by the speaker, who completed the work; that he and Senator Long eliminated obsolete and redundant statutory passages and combined and codified others, thereby reducing 4800 pages to 1600 pages of laws; and that the Kansas legislature adopted their work without change.

The Association has as members about 200 legislators, who are about equally distributed among the various sections of the country. A definite outline of its functions has been formulated, and by the annual conferences and by correspondence the project has been clearly defined. Its aim is not to formulate model or uniform state laws, but rather to act as a clearing house of information relating to matters of concern in the field of state legislation; to organize a council made up of five members of each branch of each state legislature; to organize a committee of legislators (aided by advisory boards composed of eminent specialists throughout the country) to consider special problems—such as legislative efficiency, public health, and taxation; to recommend simultaneous consideration of uniform laws proposed by the National Conference of Commissioners on Uniform State Laws and other reputable national organizations; to study and recommend measures for raising the standard and efficiency of state and national legislatures; to send periodical information to each of the 7,500 state legislators who are in office, concerning current publications and concerning occurrences of legislative significance.

The American Legislators' Associations has great promise; it marks the beginning of converting the business of law-making into a science and a new profession.

M. H. Van Nuys.

Seattle, Washington.

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Michigan Housing Association Completes Its First Task.—Detroit is the first and only city in the United States to complete a housing census which will give an index of congestion for each of the 580 zones into which Detroit has been divided for school census purposes by the board of education. The value of this index is of unusual social significance.

Various national economic bodies including the American Association of University Women, American Home Economics Association, National Housing Association, General Federation of Women's Clubs, American Civic Association and American Federation of Labor are making strenuous efforts to have similar findings obtained on a national scale. Mr. Wm. E. Steuart, chief of the U. S. Census Bureau, has naturally been hesitant in considering this large additional expenditure until some city has made such a study. Detroit should feel justly proud that it has been the one to point the way by undertaking this progressive step.

The subject was originally broached to the Michigan Housing Association by Dr. Edith Elmer Wood, chairman of the Housing Section of the American Association of University Women. The Michigan Housing Association immediately agreed to undertake this effort and was ably assisted by the local branch of the Association of University Women through its recent president, Dr. Mary Thompson Stevens.

It is highly important that the Detroit survey be carried a step further in order to show the total number of families living in one, two, three, four or more rooms. This index will serve as a basis for other important sociological studies. Studies of this character have been made in other cities but were limited to small units such as one block or a series of blocks. Detailed studies of these findings will be undertaken and reported from time to time. It is confidently hoped that since Detroit has shown the way,

the U. S. Census Bureau will find it possible to include the same questions and tabulate the same findings in the national census of 1930.

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Professor Tooke at New York University Law School.—Professor C. W. Tooke, editor of our section on Judicial Decisions, and for several years professor of law in Georgetown University, has joined the staff of the law school at New York University. Mr. Tooke will fill the chair of professor of municipal corporations, but will continue to contribute monthly to the NATIONAL MUNICIPAL REVIEW.

✻

Death of George C. Sikes.—We regret to announce the death of George C. Sikes in Chicago on July 20. The immediate cause of his death was uraemic poisoning, resulting from heart disease which developed in November, 1925. The biographical data recorded below were contributed by Charles K. Mohler, consulting engineer of Chicago.

He is survived by his wife, Madeleine Wallin Sikes; a son, Alfred Wallin Sikes; a daughter, Mrs. Eleanor Sikes Peters; and a sister, Harriet Sikes of Rugby, North Dakota.

Mr. Sikes was born near Dodge Center, Minn., June 4, 1868. In 1892 he was graduated from the University of Minnesota with the degree of B.S. In 1894 he took his master's degree from the University of Chicago.

He learned the printer's trade while attending the university, earning the greater part of his expenses by this means and was for a time president of the Minneapolis Typographical Union. He was an editorial writer on the *Chicago Record*, 1895–1900; secretary of the Chicago Street Railway Commission, 1900–2; assistant secretary of the Municipal Voters' League, 1903–5 and secretary from 1906–8; with the Chicago Harbor Commission as expert investigator from May, 1908, to February, 1909, and in like capacity for John M. Ewen, Chicago Harbor Commissioner, in the summer and fall of 1909; and secretary and special investigator of the Chicago Bureau of Public Efficiency from August, 1910, to October 1, 1923. During this time he assisted in the preparation of a series of reports issued by the Bureau, especially those on *Unification of Local Governments in Chicago* and on the *City Manager Plan for Chicago*. On November 1, 1923, he was appointed secretary of the board of trustees of the Policeman's Annuity and Benefit Fund of Chicago and served in that capacity for about two years.

Among these various other activities, he prepared, in 1917, a report on *City and County Consolidation for Los Angeles* for the Taxpayers' Association of California. He was a frequent contributor to the columns of the *Outlook* and for many years was a writer of editorials and special articles for the *Chicago Daily News*. He investigated and prepared data and articles on the subject of postal savings banks for the late Victor F. Lawson. These articles were a material aid in bringing about the establishment of the present postal savings system. At various times he took charge of certain courses in political science for Professor Charles E. Merriam during the latter's absence from the University of Chicago. The fifty-ward system and nonpartisan election of aldermen in Chicago were due almost wholly to his initiative and efforts.

His last work was as secretary of the Chicago Pension Commission for which he investigated the various pension systems of the city of Chicago with the purpose of bringing about uniform administration, placing the funds on an actuarial basis and securing them on a safe and sound foundation.

His civic interests included membership in the National Municipal League, the Illinois League of Municipalities, the Liberal Club, the City Club, and the Public Ownership League. He was a member of the Council of the National Municipal League in 1918 and 1919.

The mere recital of the activities in which Mr. Sikes was engaged gives no indication of his sterling qualities and worth as a citizen, friend and companion. His work for civic advancement was almost invaluable. It may be truthfully said of George C. Sikes that he labored unselfishly and untiringly in the public interest. The world is better for his having lived and labored.

✻

Why the High Cost of Municipal Government?—In the May issue of the *Michigan Municipal Review*, Roy F. Goodspeed contributes a four-page article on the above subject that comes nearer to answering the question than any recent treatment of this important subject. By the use of a table on the changing value of the municipal dollar, he shows that the cost of government in dollars has increased since 1916 because commodities and personal services have likewise increased. For instance, from a large

number of items in the table we learn that in 1916 policemen were paid $1,260 each per year, and cement was $1.60 per barrel; while four years later the police service cost cities $2,160, while cement had jumped in price to $4.25. The per capita tax over the same period increased from $20.08 to $31.49.

He next compared, by the use of a chart, the per capita tax with labor and commodity prices by index numbers for each year from 1909 to 1926. This serves as a means of comparing what was paid for municipal government with other essentials such as food and clothing.

This much has been done many times by writers dealing with the same subject, but the uniqueness of Mr. Goodspeed's treatment manifests itself in the next step when he interprets the per capita tax in terms of earning power. After all, is not the meat in the kernel the time that each of us must work to pay the cost of government? He is merely applying the method prevalent but a few years ago when property owners in rural sections worked out their road tax by contributing their team and wagon for an allotted period of time. The farmer is not concerned as much in the dollars he receives for his load of wheat as he is in the suits of clothes, plows and harrows, which that load of wheat will purchase.

In substance, this study shows that while municipal services have increased during the last two decades and while old services are on the whole being better administered, the hours that a common laborer would have to work to earn his per capita tax has decreased from 110 in 1915 to 80 in 1926. The corresponding figures for one of the skilled trades—carpentry—are 30.2, and 31.8. This article is both interesting and significant. C. E. Ridley

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Toledo's Charter Ready for November Election.—Toledo's city manager-P. R. charter was finally approved by the charter commission on July 30. It has one distinctly new feature in American city charters. The number of votes necessary to elect a councilman, instead of the size of council, is fixed. The quota for election is 7,000 votes, provided, however, that no less than seven councilmen shall be elected. There is also a proviso that if, at any election, more than nine are elected, the quota shall be increased by 1,000 votes at the next election until again the election of more than nine results, etc. Thus, in the long run, automatic adjustment is provided to keep the size of the council between seven and nine.

The only elective officials are the members of council. The council selects the city manager by a majority vote and may fix his salary. It also appoints three commissions—publicity and efficiency, civil service, and city plan commission. The city manager appoints the six directors of the single-headed departments and the two boards who head the departments of health and port development. These two boards have practically the complete control of their departments, with the exception of financing, which is under the control of council. Three other boards and commissions—University of Toledo, sinking fund, and zoölogical commission—are appointed by the city manager.

The salary of council is fixed at $2,000, and the mayor will receive $3,000. Council will choose the mayor from its own number, and he will have no vote. His powers are merely honorary and social.

Candidates for council will be nominated by a petition of from 700 to 1,000 signatures, and no person may sign more than one petition. No candidate may get petition papers with room for more than 1,000 names. This was provided in order that one group might not get the signatures of so great a number of people that it would be impossible for independents to get the required number of signatures. Candidates have only thirty days in which to get their petitions filled out.

Votes are to be counted at a central counting place instead of at the various precincts in the city. Every candidate is entitled to have one representative present at the counting.

Council is given power to establish a system of permanent registration.

Toledo's present charter was used to a great extent in drawing up the new charter. Fully half of its provisions were incorporated in the new draft. This could be very easily done, for Toledo has today probably one of the best strong-mayor charters in the United States. All appointive power is lodged solely in the mayor, and he has complete control over all departments, boards, and commissions in the city government.

The new charter, to become effective, must receive a majority vote at the coming November election. If passed it will go into effect on January 1, 1930.

FITZ-ELWYNE'S ASSIZE OF BUILDINGS

I Richard I (1189)

(THE PIONEER BUILDING ORDINANCE)

Introduction

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Supplement to the

National Municipal Review

September, 1928. Vol. XVII, No. 9

PUBLISHED BY

NATIONAL MUNICIPAL LEAGUE

261 Broadway, New York, N. Y.

INTRODUCTION

FITZ-ELWYNE'S ASSIZE is noteworthy not only as the earliest English building act but also as an example of municipal legislation at a period when the powers of English cities were quite indefinite and rested largely if not solely upon custom. The text herein is based upon that of the *Liber Albus* or White Book of the City of London, compiled in 1419, by John Carpenter, the clerk of the city under the mayoralty of Richard Whitington. The translation from the original Latin and Anglo-Norman is by Henry Thomas Riley, M.A., and is reproduced with his notes from the edition of the *Liber Albus* published by him in 1861.

The *Liber Albus* itself is a storehouse of information on the activities of the mediaeval city. The ancient ordinances that were included as still in force at the time of its publication include many relating to the maintenance and use of the streets, the regulation of public callings, rules of the market, local assessments and taxes and the conduct of the public officers. We may note how analogous to modern problems are those raised by the following ordinances: "that no cart serving the city shall be shod with iron" (p. 634); . . . "that no waterman carrying persons from Billyngsgate to Gravesende, or back again to Billyngsgate, shall take more than two pence for one person" (p. 209); . . . "that no carter within the liberties shall drive his cart more quickly when it is unloaded, than when it is loaded; for the avoiding of divers perils and grievances, under pain of paying forty pence into the Chambers, and of having his body committed to prison at the will of the Mayor" (p. 389); . . . "that Servants in the hostels of good folks shall not take more than they were wont" (p. 587); . . . "that Officers shall not be Brewers or Bakers, nor shall Keep carts for hire" (p. 591); . . . "that the Barbers shall not work or keep their shops open on Sundays" (p. 621); . . . "that no hoards, or palings, or other enclosure, shall be made before any tenement in the high streets or lanes in the City, or in the suburbs thereof, before that the same shall have been viewed by the Mayor and Aldermen. And if they shall see that such works are prejudicial, the same shall be in no manner allowed; and in the same manner let it be done as to steps which persons shall wish to make to cellars, the entrances to which extend out into the high streets and lanes; and let those which are made be forthwith viewed and rectified" (p. 409).

In contrast to the legislative activities of the great metropolis in the fourteenth and fifteenth centuries one may profitably compare those of a small English borough of the same period as set forth in the *Beverly Town Documents*, Volume 14 of the Selden Society publications. Here will be found a prototype of the New England town, a rural community with delegated powers of local self-government, adopting in the general meeting of all the burgesses ordinances relating to the public ways, the confinement of animals, the regulation of markets and fairs, and the exclusion of obnoxious businesses such as brick yards, but for the most part unconcerned with many of the special problems of urban life.

It may be asked in what way these ancient ordinances are of more than antiquarian interest. Obviously under our constitutional system they cannot

be regarded as precedents upon the question of the existence of similar implied powers in American cities. They are in fact rather evidence of customs and possibly have some bearing upon the state of the common law at the time they were in force. But the historical analogy one may draw between ancient and modern practice is of itself of value to the student of municipal institutions. For example, one may compare with profit the provisions of Fitz-Elwyne's Assize with the rules and regulations for the erection of buildings in the city of Washington promulgated by the President in 1791 and with the act of congress of January 12, 1809, providing a procedure for the admeasurement of conflicting claims of neighboring lot owners. Though it may not be worth while to delve too far into medieval lore, the student should find some inspiration in noting that questions similar to those we now have before us today confronted the cities of England in the days when the King's courts were little more than a name.

C. W. Tooke.

FITZ-ELWYNE'S ASSIZE OF BUILDINGS, RICHARD I

In the year of our Lord 1189, in the first year, namely, of the reign of the illustrious King Richard, Henry Fitz-Elwyne (who was the first Mayor of London) being then Mayor, it was, by the more discreet men of the City (thus) provided and ordained, for the allaying of the contentions that at times arise between neighbors in the City touching boundaries made, or to be made, between their lands, and other things; to the end that, according to the provisions then made and ordained, such contentions might be allayed.

THAT TWELVE ALDERMEN SHALL BE AT THE HUSTINGS

The said provision and Ordinance was called an "Assize." To prosecute which Assize, and carry the same into effect, twelve men were elected, Aldermen[1] of the City, in full Hustings; and were sworn, that they would attend faithfully to carry out the same, and at the summons of the Mayor to appear, unless by reasonable cause prevented. It was necessary, however, that the greater part of the twelve men aforesaid should be present with the Mayor in carrying out the matters aforesaid.

THAT HE WHO DEMANDS THE ASSIZE, MUST DEMAND IT IN FULL HUSTINGS

It should be known, that he who demands the Assize, must demand it in full Hustings; and the Mayor shall assign him a day within the next eight days, for such Assize by the twelve men aforesaid, or the greater part of them, in manner already mentioned, to be determined.

[2] But if a house, stone wall, drain, rain-gutter, or any other edifice shall during the time of petition for the said Assize be built, immediately, at suit of the party petitioning, (the other) shall be forbidden proceeding any further with such building. And if, notwithstanding such prohibition, any carpenters, stonemasons, or other workmen, or even the owner of the said building, shall persist in so building, they shall be sent to prison.

IF THE HUSTINGS BE NOT SITTING, THEN THE ASSIZE SHALL BE GRANTED AT A CONGREGATION OF THE MAYOR AND ALDERMEN

But if the Hustings be not sitting, as at the time of the Fair of Saint Bartholomew,[3] harvest-time, and the Fair held at Winchester, and a person shall deem it necessary to demand such Assize, the same shall be granted unto him gratuitously by the Mayor, some of the citizens being present with such Mayor, and be determined by the twelve jurors aforesaid, in manner already stated, or the greater part of them, and that always in presence of the Mayor.

[1] This word is omitted in the earliest copy of this Assize, that in the *Liber de Antiquis Legibus*. It is, in all probability, erroneous, as it is not likely that the Aldermen, as a body, would undertake such duties.

[2] This passage does not appear in the earliest copy, that in the *Liber de Antiquis Legibus*, preserved at Guildhall.

[3] "Botolph" (*i.e.* Boston, in Lincolnshire) appears in three other copies, including the earliest one.

The provision and Ordinance aforesaid, which has been called an "Assize," is to the following effect:

OF BUILDINGS ERECTED BETWEEN NEIGHBORS

When it happens that two neighbors wish to build between themselves a stone wall, each of them ought to give one foot and a half of his land; and so at their joint cost they shall build a stone wall between them, three feet in thickness and sixteen feet in height. And if they wish, they shall make a rain-gutter between them, at their joint cost, to receive and carry off the water from their houses, in such manner as they may deem most expedient. But if they should [1] (not) wish to so do, either of them may make a gutter by himself, to carry off the water that falls from his house, on to his own land, unless he can carry it into the King's highway.

They may also, if they agree thereupon, raise the said wall, as high as they may please, at their joint cost. And if it shall so happen that one wishes to raise such wall, and the other not, it shall be fully lawful for him who so wishes it, to raise the part on his own foot and a half as much as he may please, and to build upon his part,[2] without damage to the other, at his own cost; and he shall receive the falling water in manner already stated.

And if both shall wish to have arches,[3] such arches must be made on either side, of the depth of one foot only; so that the thickness of the wall lying between such arches may be one foot. But if one shall wish to have an arch, and the other not, then he who shall wish to have the arch shall find free-stone, and shall cause it to be cut, and the arch shall be set at their joint expense.

OF BUILDING STONE WALLS BETWEEN NEIGHBORS

And if any one shall wish to build of stone, according to the Assize, and his neighbor through poverty cannot, or perchance will not, then the latter ought to give unto him who so desires to build by the Assize, three feet of his own land; and the other shall make a wall upon that land, at his own cost, three feet thick and sixteen feet in height; and he who gives the land shall have one clear half of such wall, and may place his timber upon it and build.[4] And they shall make a gutter, to receive and carry off the water falling from their houses, in such manner as is before mentioned as to a wall built between neighbors at their joint expense. But it shall always be lawful for one desiring so to do, to raise his own part at his own cost, without damage to the other. And if they shall wish to have arches, they shall make them on either side, in manner already stated. But nevertheless, he who shall have found the land, shall find the free-stone, and shall have it cut; and the other at his own cost shall set the same.

But this Assize is not to be granted unto any one, so as to cause any doorway, inlet or outlet, or shop, to be narrowed or restricted, to the annoyance of a neighbor.

OF GRANT OF THIS ASSIZE

This Assize is also granted unto him who demands it as to the land of his neighbor, even though such land shall have been built upon,[5] (provided the wall so built is not) of stone.

[1] The reading "voluerint," probably, is an error for "noluerint."

[2] *I.e.*, place his joists and rafters upon it

[3] Used as ambries, or cupboards.

[4] Either the joists for flooring, or the wood for the superstructure and roof.

[5] This passage, supplied from the other copies, has been omitted from inadvertence.

OF STONE WALLS AND RAIN-GUTTERS

If any person shall have his own stone wall upon his own land, of the height of sixteen feet, his neighbor ought to make a gutter under the eaves of the house that is situated upon such wall, and to receive in it the water falling from the said house, and lead it on to his own land, unless he can carry it off into the highway; and he shall, notwithstanding, have no interest in the aforesaid wall, when he shall have built (a wall) beside it. And in case he shall not have so built, he still ought always to receive the water falling from the house built on such wall upon his own land, and carry it off without damage of him unto whom the wall belongs.

OF COMMON WALLS OF STONE

Also, no one of those who have a common stone wall built between them, may, or ought to, pull down any portion of his part of such wall, or lessen its thickness, or make arches in it, without the assent and will of the other.

OF NECESSARY-CHAMBERS IN HOUSES

Also, concerning necessary-chambers in the houses of citizens, it is enacted and ordained, that if the pit made in such chamber be lined with stone, the mouth of the said pit shall be distant two and one-half feet from the land of the neighbor, even though they have a common stone wall between them. But if it shall not be lined with stone, it ought to be distant three and one-half feet from the neighbor's land. And as to such pits, the Assize is afforded and granted unto every one who shall demand the same, in reference as well to those of former construction as to new ones, unless the same should happen to have been made before the provision and Ordinance aforesaid, which was enacted in the first year of the reign of King Richard, as already mentioned. Provided always, that by view of such twelve men as are before-mentioned, or the greater part of them, it shall be discussed whether such pits have been reasonably made or not.

[1] In the same manner, proceedings must be taken where disputes arise as to any kinds of pits made for receiving water, whether clean or foul.

OF THE OBSTRUCTION OF THE VIEW FROM WINDOWS

Also, if any person shall have windows looking upon his neighbor's land, although he may have been for a long time in possession of the view from such windows, and even though his predecessors may have been in possession of the windows aforesaid, nevertheless, his neighbor may lawfully obstruct the view from such windows by building opposite to the same, or by placing (anything) there upon his own land, in such manner as may unto him seem most expedient; unless the person who has such windows, can show any writing by reason whereof his neighbor may not obstruct the view from those windows.

OF CORBELS

Also, if any person has corbels in his neighbor's wall, the whole of such wall belonging to his said neighbor, he may not remove the aforesaid corbels, that he may fix them in any other part of the said wall, except with the assent of him to whom such wall belongs; nor may he put more corbels in the wall aforesaid than he had before.

OF IMPEDING THE ERECTION OF BUILDINGS

Be it known, that if a person builds near the tenement of his neighbor, and

[1] This passage is wanting in the *Liber de Antiquis Legibus.*

it appears unto such neighbor that such building is unjust and to the injury of his own tenement, it shall be fully lawful for him to impede the erection of such building, pledge and surety being given unto the Sheriff of the City that he will prosecute; and thereupon such building shall cease, until by the twelve men aforesaid, or the greater part of them, it shall be discussed whether such building is unjust or not. And then it (becomes) necessary that he, whose building is so impeded, shall demand the Assize.

THAT THE MAYOR SHALL VISIT THE TENEMENTS WHERE THE ASSIZE IS DEMANDED, WITH THE TWELVE MEN

On the day appointed, and the twelve men aforesaid being duly summoned, the Mayor of the City, with the twelve men aforesaid, ought to visit the tenements of the persons between whom the Assize is demanded, and there, upon view of the twelve men aforesaid, or the greater part of them, after hearing the case of the complainant and the answer of his adversary, to settle the matter.

But either party may, on the day appointed, essoin himself,[1] and have his day at the same place on that day fortnight.

OF DEFAULT ON PART OF THE COMPLAINANT

But if the party complaining shall make default, his adversary shall depart without day,[2] and the sureties of the complainant shall be amerced by the Sheriffs. But if the person against whom the complaint is made makes such default, the Assize shall nevertheless proceed, according to the award of the twelve men aforesaid, or the greater part of them; and the award that shall be given by them ought by the Sheriff to be reported unto him who has so made default, to the end that the award so made may within the forty days next ensuing be carried into effect.

So often as such award shall not within forty days have been carried into effect, and complaint shall have been made thereon unto the Mayor of London, in such case, two men of the Assize, or three, ought by precept of the Mayor proceed to the spot; and if they shall see that so it is, then shall he against whom such proceedings of Assize were taken, be amerced by the Sheriff; and the Sheriff, at the sole cost of such person, is bound to carry judgment into effect.

OF CORBELS AND JOISTS

If a person has a wall built between himself and his neighbor, entirely covered at the summit of such wall with his own roofing and timber, although his neighbor may have in the aforesaid wall corbels or joists for the support of his solar,[3] or even arches or ambries;—in whatever way such neighbor may have the same in such wall, whether by grant of him who owns the wall so covered, or of his ancestor, or even without their knowledge,—he may claim or have no more in the aforesaid wall than he has in possession, without the assent of him who owns the wall so covered; and he ought to receive the water falling from the house built upon such wall, under the eaves of the said house, as before-mentioned in this book, and to carry it off at his own cost.

OF DIFFERENT PROPORTIONS OWNED IN A WALL

If a person owns two parts in a wall, and his neighbor owns only a third

[1] Put in a legal excuse for non-attendance.

[2] *I.e.* absolutely dismissed from future attendance.

[3] Upper room.

part, still such neighbor may place his roofing on his own part and build, as freely as he who owns the (other) two parts of such wall. And in the same manner ought rain-gutters to be made between them, as already noted in reference to those who have a wall wholly in common between them; provided always that portion be sixteen feet in height.

OF THE ASSIZE

And be it known, that the Assize aforesaid shall not proceed, unless it shall be testified that he against whom the Assize is demanded, has been summoned.

WHERE THE ASSIZE SHALL PROCEED

And if by the Sheriffs the same shall be testified, then upon appearance of him who demands the Assize, and of the twelve men of such Assize, or the greater part of them, the Assize shall proceed, whether the party summoned shall appear or not. Still, however, he may essoin himself upon the day aforesaid, and have his day upon that day fortnight, in manner already stated.

And if it shall be testified by the Sheriffs, that he against whom the Assize is demanded was not in the City upon such day, then the Assize shall stand over, and the Sheriffs shall inform those who dwell in the tenement as to which such Assize is demanded, that he whose tenement it is, must be warned to appear upon that day fortnight; upon which day, whether he shall appear or not, in case he shall not have essoined himself, the Assize shall proceed.

WHERE THE ASSIZE MUST BE DEMANDED AFRESH

And if it shall so happen, by reason of some impediment, that the men of the Assize do not proceed unto the land as to which such Assize is demanded, then it will be necessary for such Assize to be demanded afresh, either in the Hustings, or in such other way as is the usage at a different season, as already stated in this book.

But if view is made of the land, the parties pleading being present, and the greater part of the twelve men aforesaid being absent, then, although the Assize will have to stand over, they may continue the proceedings of that day upon the morrow, or upon such day, within the following fortnight, as they may please.

OF THE ANCIENT MANNER OF BUILDING HOUSES

It should be remarked that in ancient times the greater part of the City was built of wood, and the houses were covered with straw, stubble, and the like.

Hence it happened that when a single house had caught fire, the greater part of the City was destroyed through such conflagration; a thing that took place in the first year of the reign of King Stephen, when, by reason of fire that broke out at London Bridge, the church of Saint Paul was burnt; from which spot the conflagration extended, destroying houses and buildings, as far as the church of Saint Clement Danes.

After this, many of the citizens, to the best of their ability to avoid such a peril, built stone houses upon their foundations, covered with thick tiles, and (so) protected against the fury of the flames; whence it has often been the case that, when a fire has broken out in the City, and has destroyed many buildings, upon reaching such houses, it has been unable to do further mischief, and has been there extinguished; so that, through such a house as this the houses of the neighbors have been saved from being burnt.

Hence it is, that in the aforesaid

Ordinance, called the "Assize," it was provided and ordained, in order that the citizens might be encouraged to build with stone, that every one who should have a stone wall upon his own land sixteen feet in height, might possess the same as freely and meritoriously as in manner already stated; it always being the duty, that is to say, of such man's neighbor, to receive upon his own land the water falling from the house built upon such wall, and at his own cost to carry off the same; and if he shall wish to build near the said wall, he is bound to make his own gutter under the eaves of the house for receiving the water therefrom. And this, to the end that such house may remain secure and protected against the violence of fire when it comes, and so, through it, many a house may be saved and preserved unharmed by the violence of the flames.

OF THE BUILDING OF WALLS

If any person shall wish to build the whole of a wall upon his own land, and his neighbor shall demand against him an Assize, it shall be at his election either to join the other in building a wall in common between them, or to build a wall upon his own land, and to have the same as freely and meritoriously, as in manner already stated. His neighbor also may, if he wishes, build another like wall, and of the like height, near unto the wall aforesaid: and in such case, rain-gutters or a gutter shall be made between them in the same manner as already stated in reference to a wall held in common.

THE MANNER OF REGULATING THE ASSIZE

It should be remarked, that when the men of the Assize shall visit the land as to which such Assize is demanded, the parties litigating being present, one of the men aforesaid ought always to ask him against whom the Assize is demanded, if he knows aught by reason whereof such Assize ought to stand over. And if he shall say that he does not, such Assize shall immediately proceed. But if he shall say that he has a deed from him who demands the Assize, or from some ancestor of his, and shall make profert thereof, (benefit of) the same shall immediately be allowed him. But if he shall say that he is not prepared to produce it, but will have such deed at a day and time when etc., then a day shall be given him on that day fortnight; upon which day he may essoin himself, and may have his day at the end of another fortnight. Upon which day, if he shall produce the said deed, (benefit of) the same shall be allowed him; but if upon such day he shall not appear,—or if he shall appear and not produce the deed,—the Assize shall immediately proceed, without further delay.

It should be remarked, that this Assize proceeds in every way, as before stated in this book, both as to pleading and defending, as well against persons under age as against those who are of full age; that so by reason of the tender age of any person the Assize aforesaid shall not be prevented. But forasmuch as such a person has no discretion whereby to know how to plead or defend himself in any plea, it is necessary that his guardian and he should be jointly summoned; that so his guardian may wholly make answer for him, in every way that he would have had to plead if such cause had been his own; and then, whatever shall be done upon award, shall remain firm and established, without reclaim on part of him who was so under age, when he shall have come of age.

Also, if any one shall make a pavement unjustly in the King's highway, to the nuisance of the City and his

neighbor, such neighbor may rightfully prevent it, through the Bailiffs of the City; and so it shall remain, until the matter shall have been discussed and determined by the men of the Assize.

It should also be known, that it does not pertain unto the men of the Assize to take cognizance of any case of occupation where a person has had peaceful possession for a year and a day, etc.

OF THE DROPPING OF RAIN WATER, AND OF GUTTERS

[1] And although a person shall have been in possession for a long time, the water that drops from his house,—it not having a wall of stone,—falling upon the vacant land of his neighbor, still such neighbor may build upon the said land, whenever he shall please, and may remove the eaves of the said house. And in such case, the person (building) must carry off the water that falls from the said house, without detriment to his neighbor. The same is to be done also as to rain-gutters that discharge themselves upon vacant ground.

OF THE SAME

And if a person's rain-gutter shall discharge itself into the gutter of his neighbor, or shall run through the middle of his tenement, such neighbor may not stop up such gutter; and even if he shall pull down that house, and shall think proper to build it anew, he shall still be bound to receive upon his own land the water falling from such gutter, and carry off the same, as before he used to do; but it must be fully understood by the men of the Assize that the water discharged by such gutter was so received and carried off.

[1] This and the next article are not included in the *Libre de Antiques Legibus*, but are to be found in the later copies.

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